

ORIGINAL



0000173269

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED  
AZ CORP COMMISSION  
DOCKET CONTROL

**COMMISSIONERS**

DOUG LITTLE – CHAIRMAN  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

SEP -9 P 4: 52

IN THE MATTER OF THE APPLICATION OF  
ARIZONA PUBLIC SERVICE COMPANY  
FOR A HEARING TO DETERMINE THE  
FAIR VALUE OF THE UTILITY PROPERTY  
OF THE COMPANY FOR RATEMAKING  
PURPOSES, TO FIX A JUST AND  
REASONABLE RATE OF RETURN  
THEREON, TO APPROVE RATE  
SCHEDULES DESIGNED TO DEVELOP  
SUCH RETURN.

DOCKET NO. E-01345A-16-0036

Arizona Corporation Commission

**DOCKETED**

SEP 09 2016

DOCKETED BY

*KG*

IN THE MATTER OF FUEL AND  
PURCHASED POWER PROCUREMENT  
AUDITS FOR ARIZONA PUBLIC SERVICE  
COMPANY

DOCKET NO. E-01345A-16-0123

**MOTION TO QUASH, OR, IN  
THE ALTERNATIVE, TO  
DECLINE TO HEAR**

Pursuant to Corporation Commission Rule R14-3-109(O), Arizona Public Service Company ("APS") and Pinnacle West Capital Corporation ("Pinnacle West"), collectively "the Companies," hereby move the Commission to quash the subpoenas issued by Commissioner Burns on August 25, 2016, and served on the Companies on August 26, 2016, attached hereto as Exhibit A. Under that rule, the Commission may "[q]uash the subpoena if it is unreasonable or oppressive." A.A.C. R14-3-109(O). For the reasons given below, the Commission should exercise that authority here.

OSBORN  
MALEDON

A PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

Alternatively, the Companies request that the Commission issue an order staying the obligation to comply with the subpoenas, declining to decide the issues raised in this motion, and prospectively declining to decide a petition for rehearing.

## INTRODUCTION

This case involves the latest stage in a year-long campaign of harassment waged by an Arizona Corporation Commissioner against the Companies for their perceived political speech. During the 2014 election cycle, certain 501(c)(4) social welfare organizations made expenditures in connection with Commission elections. Those organizations have not disclosed their donors under Arizona's campaign finance laws, and there is no suggestion that those organizations violated Arizona law by failing to do so. As the State of Arizona recently told the U.S. Supreme Court, "mandatory [campaign expenditure] disclosure rules invariably chill" activity protected by the First Amendment and invite "government officials ... to single out their political opponents for retribution. Thus, the First Amendment harm is inherent in the disclosure to the government official..."<sup>1</sup> Nevertheless, based on speculation that the Companies may have donated to these social welfare organizations, Commissioner Burns has issued subpoenas compelling the Companies to open their books and publicly divulge any political expenditures, charitable contributions, and lobbying expenditures they may have made.

The Commission should quash the subpoenas, for several reasons. First, much of the information sought by Commissioner Burns—including any information relating to APS and Pinnacle West’s alleged political expenditures—is irrelevant to the ostensible purpose of the subpoena, which is to ensure that ratepayers are not being charged for such expenditures. As Commissioner Burns well knows, APS’s rates are set following a detailed and comprehensive rate case proceeding, in which APS justifies all the categories of expenses for which it seeks to charge its customers and substantiates the amounts to be charged. Those amounts do not

<sup>1</sup> Brief of the States of Arizona, Michigan, and South Carolina as *Amici Curiae* in Support of Petitioner at 2, *Center for Competitive Politics v. Harris*, No. 15-152 (U.S. Sept. 2, 2015).

1 include any charitable contributions or political expenditures. Information regarding the  
2 expenses that APS has sought to recover in rates currently being charged is already in the  
3 Commission's possession, and has been carefully vetted by Commission Staff and presumably  
4 by Commissioner Burns himself. Information regarding the expenses that APS will seek to  
5 recover in its currently pending rate case will likewise be carefully vetted by Commission Staff  
6 and Commissioner Burns. Other APS and Pinnacle West documents, and Commissioner  
7 Burns's requests for information regarding political, charitable, and lobbying expenditures, are  
8 categorically irrelevant to APS's rates. The Commission should relieve the Companies of any  
9 obligation to produce such documents, information, or witnesses.<sup>2</sup>

10 The fact that the bulk of the information sought by Commissioner Burns is irrelevant to  
11 his stated purpose simply underscores the true motive of the inquiry: to deter political speech.  
12 Commissioner Burns began his inquiry last summer by asking all parties appearing before the  
13 Commission to "voluntarily refrain" from any political expenditures in the 2016 election cycle,  
14 when Commissioner Burns would be up for reelection—though he made clear that his prime  
15 concern was with "APS's alleged contributions to political campaigns." Letter from  
16 Commissioners Bitter Smith and Burns 1, Docket No. AU-00000A-15-0309 (Sept. 8, 2015)  
17 (Ex. B). When APS declined to muzzle itself, Commissioner Burns responded by initiating the  
18 inquiry that has culminated in the subpoenas at issue, based on the Commissioner's own view  
19 that "support for any particular candidate should be open and transparent." Letter from  
20 Commissioner Burns 1, Docket No. AU-00000A-15-0309 (Nov. 30, 2015) (Ex. C). As a  
21 citizen, Commissioner Burns is entitled to that view, but as a Commissioner, he is bound to  
22 follow the law, and Arizona law does not require the disclosure he demands. A Commissioner  
23 is not entitled to use his office to demand election-related disclosures that the Arizona  
24 Legislature has declined to adopt—let alone to selectively target that demand at a single  
25 company and its unregulated parent. The subpoenas are unlawful under the First Amendment,

---

26  
27 <sup>2</sup> As noted in the Objections served by the Companies on Commissioner Burns, the  
28 Companies will voluntarily produce public APS documents responsive to the subpoenas and  
certain non-public APS documents upon entry of an appropriate confidentiality agreement.

1 which prohibits officials from using their official positions to harass and retaliate against  
2 companies because of perceived political speech, as well as under long-standing Arizona law  
3 prohibiting government officials from using their subpoena power to harass and retaliate.

4 The subpoenas' demands that APS and Pinnacle West produce its Chief Executive  
5 Officer, Donald Brandt, for a deposition are likewise unlawful, and the Commission should  
6 terminate the need for the Companies to comply with that requirement. Well-established law  
7 holds that a subpoena cannot be used to compel testimony of a high-ranking company officer  
8 when a lower level employee possesses the knowledge relevant to the facts at issue. The intent  
9 to harass and retaliate against the Companies highlights the necessity of quashing the  
10 subpoenas as they relate to Mr. Brandt testifying.

11 Finally, the subpoenas should be quashed because Commissioner Burns has made clear  
12 his intention "to publicly file all documents related to this investigation." Letter from  
13 Commissioner Burns 1, Docket No. E-01345A-16-0036 (Aug. 25, 2016) (Ex. A). The  
14 documents sought by Commissioner Burns, however, concern information that is confidential.  
15 Parties to utility rate cases routinely sign confidentiality agreements before receiving  
16 documents related to utility rate requests. Commissioner Burns's threat to disregard  
17 confidentiality merely underscores the improper and unlawful purpose behind the subpoenas,  
18 and flouts the Commission's own rules intended to safeguard the confidentiality of information  
19 submitted to it.

20 Alternatively, the Commission should stay the Companies' obligation to comply with  
21 the subpoenas in order to preserve the status quo, decline to decide the issues presented by this  
22 motion, and prospectively decline to decide a petition for rehearing.<sup>3</sup> Doing so would lessen  
23 the Commission's burden in light of an already full slate of rate cases and important public  
24

---

25 <sup>3</sup> The issuance of subpoenas by a single Commissioner, separate and apart from any  
26 investigation authorized by the Commission as a whole, is unprecedented, as far as the  
27 Companies are aware. Thus, the proper procedural path to challenge the subpoenas is  
28 unsettled. Out of an abundance of caution, the Companies have filed a complaint for  
declaratory relief, special action, and motion for preliminary injunction in superior court  
contemporaneous with the filing of this motion.

1 policy issues. It would also introduce a neutral arbiter to this subject matter that is readily  
2 equipped to hear all sides of this issue.

### 3 **FACTUAL BACKGROUND**

#### 4 **A. Commissioner Burns Requests That APS and Pinnacle West Voluntarily** 5 **Abstain from Engaging in Protected First Amendment Activity.**

6 Responding to rumors in the media speculating that APS had made donations to social  
7 welfare organizations that in turn made political expenditures in the 2014 campaign season,  
8 Commissioners Burns and Bitter Smith publicly issued a joint letter on September 8, 2015,  
9 “request[ing] that all public service corporations and unregulated entities that appear before the  
10 Commission agree to voluntarily refrain from making campaign contributions in support of or  
11 in opposition to Corporation Commission candidates.” Letter from Commissioners Bitter  
12 Smith and Burns 1, Docket No. AU-00000A-15-0309 (Sept. 8, 2015) (Ex. B).<sup>4</sup> In particular,  
13 the letter emphasized “APS’s alleged contributions to political campaigns.” *Id.*

14 The letter “acknowledge[d] that public service corporations have a First Amendment  
15 right to support the candidates of their choice” and that “this constitutional right carries with it  
16 the right to contribute to political campaigns.” *Id.* The letter also conceded that the “laws  
17 governing campaign finance are not within the Commission’s purview” and “at the present  
18 time, there do not appear to be assertions that Pinnacle West, APS or others have failed to  
19 comply with any applicable campaign finance laws.” *Id.* Nonetheless, the Commissioners  
20 asserted that they personally “view it as unacceptable and inappropriate for public service  
21 corporations or others to make campaign contributions in support of or in opposition to any  
22 candidate for the Corporation Commission.” *Id.*

23 Each of the other Commissioners filed responses to Commissioners Burns and Bitter  
24 Smith’s request. Commissioner Forese stated that Commissioners should not “attempt[] to  
25 influence campaigns in their official capacity” and that the voluntary request to refrain from  
26 campaign spending would “have severe implications to civil liberties.” Letter from

---

27 <sup>4</sup> Commissioners Burns and Bitter Smith had filed, in the same docket, a draft of this  
28 letter on August 27, 2015.

1 Commissioner Forese 1, Docket No. AU-00000A-15-0309 (Sept. 4, 2015) (Ex. D).  
2 Commissioner Forese also noted that the public would be left “with incomplete information”  
3 because Commissioner Burns’s request “would not extend to the communications of  
4 organizations who are not under the purview of the Commission.” *Id.* at 2.

5 Chairman Little opposed the request because “[a]ny attempt to control who speaks or  
6 what is said runs counter to the First Amendment,” which “protects political speech and by  
7 inference, spending money to engage in political speech.” Letter from Commissioner Little 1,  
8 2, Docket No. AU-00000A-15-0309 (Sept. 8, 2015) (Ex. E).

9 Chairman Little filed another letter a week later, in response to Commissioner Burns’s  
10 statement at a Commission Staff meeting “express[ing] his desire to subpoena the financial  
11 records” of APS “to determine if they engaged in political spending ... in the 2014 election.”  
12 Letter from Commissioner Little, Docket No. AU-00000A-15-0309 (Sept. 11, 2015) (Ex. F).  
13 Chairman Little emphasized that any “attempt to subpoena [campaign finance] records will  
14 have similar constitutional and practical problems.” *Id.* Specifically, Chairman Little noted  
15 that “it would be impossible for any expenditure” from 2014 “to be included in rates because  
16 there has not been a rate case filed since that time.” *Id.* Moreover, “[c]osts associated with  
17 political activities ... are not recoverable in rates,” and “[d]uring the course of a rate case an  
18 audit is performed that ensures ... that no such expenditures are recovered through rates.” *Id.*  
19 Thus, Chairman Little stated, the “purpose such a subpoena would serve” was “not clear.” *Id.*  
20 In addition, Chairman Little noted, “an examination of APS’ activities during the campaign  
21 will not give us a complete picture,” because “[m]any entities other than APS may have  
22 participated in the 2014 elections.” *Id.* “To subpoena APS and leave all of these other entities  
23 unexamined would be inherently unfair and would lead to an incomplete picture of what  
24 actually was going on in the 2014 elections.” *Id.* Finally, Chairman Little emphasized,  
25 Arizona law does not require disclosure of the identity of donors who make independent  
26 expenditures to 501(c)(4) social welfare organizations. “If Arizonans want to change that, the  
27 proper venue is the Arizona Legislature, not the Arizona Corporation Commission.” *Id.*  
28

1 Commissioner Stump indicated that he would “prefer that all parties with business  
2 before the Commission refrain from participating in Commission races” but concluded that  
3 “their participation is perfectly legal and within their First Amendment rights.” Letter from  
4 Commissioner Stump 1, Docket No. AU-00000A-15-0309 (Sept. 8, 2015). Commissioner  
5 Stump likewise noted that the request to abstain would not reach unregulated entities, thereby  
6 creating “an uneven playing field among parties wishing to exercise their First Amendment  
7 rights.” *Id.*

8 On October 23, 2015, the Companies responded to Commissioners Burns’s “unusual”  
9 and “unprecedented” request and respectfully declined “to forfeit any of their First Amendment  
10 rights to speak on public issues.” Letter from Donald E. Brandt at 1, 3, Docket No. AU-  
11 00000A-15-0309 (Oct. 23, 2015) (Ex. G). Noting the long-standing First Amendment  
12 protection for corporations to engage in political speech, the Companies expressed concern  
13 over “a request from governmental officials with great authority over APS to relinquish one  
14 means of expression of this right.” *Id.* APS and Pinnacle West also highlighted that  
15 Commissioner Burns’s request would place APS at a severe disadvantage in the marketplace of  
16 ideas because “significant political expenditures will undoubtedly be made by others” who are  
17 not regulated by the Commission but who “have strong economic interests in Commission  
18 decisions.” *Id.* at 2-3.

19 **B. Commissioner Burns Requests Records of Political Contributions to**  
20 **Confirm That Ratepayer Funds Are Not Used for Political Speech.**

21 Undaunted by the fact that Arizona law does not mandate the disclosure of independent  
22 political expenditures, Commissioner Burns sent another letter on November 30, 2015, stating  
23 that “in my opinion, your support for any particular candidate should be open and transparent.”  
24 Letter from Commissioner Burns 1, Docket No. AU-00000A-15-0309 (Nov. 30, 2015) (Ex. C).  
25 Based on that personal view about what Arizona should (but does not) require, Commissioner  
26 Burns “ask[ed] APS to provide my office with a full report of all spending related in any way to  
27 the 2014 election cycle.” *Id.* The ostensible purpose of the inquiry was “to find out if APS has  
28

1 spent ratepayer money to support or oppose the election of Arizona Corporation Commission  
2 candidates” and “to ensure that only APS’s profits are being used for political speech.” *Id.* But  
3 Commissioner Burns did not respond to Chairman Little’s point that it would be impossible for  
4 APS to recover 2014 political expenditures from ratepayers, because its rates were set based on  
5 its expenses in 2010 and because there is an audit process in place to ensure that political  
6 expenditures cannot be charged to customers in rates.

7 APS responded on December 29, 2015, confirming the company’s understanding and  
8 commitment that “any political contribution made by a public service corporation [is] not  
9 treated as an operating expense recoverable in rates.” Letter from Donald E. Brandt 1, Docket  
10 No. AU-00000A-15-0309 (Dec. 29, 2015) (Ex. H).

11 **C. Commissioner Burns Broadens His Inquiry After APS Declined to**  
12 **“Voluntarily” Compromise Its First Amendment Rights.**

13 On January 28, 2016, Commissioner Burns sent another letter that “embark[ed] upon  
14 the next stage of my inquiry into APS’s possible campaign contributions” in the 2014 election  
15 cycle. Notice of Investigation 1, Docket No. AU-00000A-15-0309 (Jan. 28, 2016) (Ex. I).  
16 Commissioner Burns stated that the investigation was prompted by the fact that APS had  
17 “rejected [the] proposal” to “voluntarily agree to refrain from making political contributions ...  
18 in the upcoming election cycle,” and then had declined to “provide a report listing any  
19 campaign contributions ... by APS in 2014.” *Id.* As a result, Commissioner Burns announced  
20 his intent “to broaden my inquiry to include funds expended on all political contributions,  
21 lobbying, and charitable contributions, *i.e.* all donations made—either directly or indirectly—  
22 by APS or under APS’s brand name for any purpose.” *Id.*

23 Commissioner Burns indicated that he would be “in contact with” APS “soon,” but  
24 never followed up, and APS did not respond. Nevertheless, Commissioner Burns made clear  
25 that he intended to use his vote as Commissioner as a “tool” to force APS’s compliance with  
26 his demands. At the Commission’s April 12, 2016, meeting, Commissioner Burns stated that  
27 “[a]ll votes of this Commission are a tool to be used,” and that he “will not support any further  
28



1 action items requested by APS with the exception of an item that might have health or safety  
2 components” until APS complied with his demands. Transcript of Open Meeting 12-13,  
3 Docket No. E-01345A-11-0224 (Apr. 12, 2016) (Ex. J).

4 On April 20, 2016, Commissioner Burns issued a letter purporting “to elucidate” his  
5 statements at the April 12 meeting. See Letter from Commissioner Burns 1, Docket No. E-  
6 01345A-11-0224 (Apr. 20, 2016) (Ex. K). He clarified that he would “consider every case that  
7 comes before this Commission on its merits” but would “continue to explore every means  
8 available to me to acquire the information that I have ordered from APS.” *Id.* Nevertheless,  
9 Commissioner Burns’s campaign website continues to advertise, as part of a “[t]imeline of my  
10 battle with APS,” that he “refuses to vote for APS items until company discloses ‘dark money’  
11 ties.” Commissioner Bob Burns website, <http://www.bobburns.gop/issues.aspx> (Ex. N).

12 **D. Commissioner Burns Issues Subpoenas to the Companies.**

13 In August 2016, Commissioner Burns sought to retain an attorney to conduct an  
14 investigation into campaign expenditures in Commissioner elections. In an open meeting on  
15 August 11, 2016, Commissioner Burns explained the purpose of the investigation as  
16 “protecting the ratepayer ... from undue influence by utility overspending and  
17 overparticipating, if you will, in the elections of Corporation Commissioner.” Transcript of  
18 Staff Meeting: Special Open Meeting 59, Docket No. AU-00000E-16-0270 (Aug. 11, 2016)  
19 (Ex. L). He made clear that he does not believe any of the current Commissioners have been  
20 unduly influenced. See *id.* at 20 (“I’m not telling anybody that you’re unduly influenced. I’m  
21 concerned about the future of who comes to run for the Corporation Commission and how they  
22 are perceiving these large sums of money being pumped into these campaigns.”). The  
23 Commission declined to authorize the expenditure of Commission funds to support the  
24 investigation.

25 On August 25, 2016, Commissioner Burns issued the subpoenas that are the subject of  
26 this Motion to Quash. See Letter from Commissioner Burns 1, Docket No. E-01345A-16-0036  
27 (Aug. 25, 2016) (Ex. A). He claimed that “[f]or nearly two years now, APS has refused to  
28

1 voluntarily answer my questions about any political expenditures that APS/Pinnacle West may  
2 have made” and “[c]onsequently, it is necessary for me to proceed in a more direct way.” *Id.*  
3 Consistent with his previous letters, Commissioner Burns once again stated that his purpose  
4 was to “determine whether APS has used ratepayer funds for political, charitable or other  
5 expenditures.” *Id.*

6 Commissioner Burns ordered APS and Pinnacle West CEO Donald Brandt to appear for  
7 testimony on October 6, 2016, and ordered the parties to provide, by September 15, 2016,  
8 documents and information including:

- 9 (1) all documents “of any kind that describe arrangement governing Pinnacle  
10 West’s expenditures or donations of funds for any purpose under APS’s name or  
11 brand”;
- 12 (2) all documents “of any kinds that describe the arrangements governing the APS  
13 Foundation’s expenditures or donations of funds for any purpose under APS’s  
14 name or brand”;
- 15 (3) for APS, in each year 2011-2016: “each charitable contribution,” “each political  
16 contribution,” “each expenditure made ... for lobbying purposes,” “each  
17 marketing/advertising expenditure,” and “a list of all expenditures to 501(c)(3)  
18 and 501(c)(4) organizations”;
- 19 (4) for Pinnacle West, in each year 2011-2016: “all charitable contributions,” “all  
20 donations for political purposes,” “all expenditures to 501(c)(3) organizations,”  
21 “all expenditures to 501(c)(4) organizations,” and “each marketing/advertising  
22 expenditure.”
- 23 (5) information on “any foundations or other entities (formed for charitable or other  
24 philanthropic purposes) that are related to APS and/or Pinnacle West,” including  
25 “how these entities are funded.”

26 Commissioner Burns made clear that he “intend[s] to publicly file all documents related to this  
27 investigation.” *Id.* The subpoenas were served on August 26, 2016.

#### 28 ARGUMENT

“[A] party may resist the Commission’s subpoena on grounds that the inquiry is not  
within its scope of authority, the order is too vague, the subpoena seeks irrelevant information,  
or the investigation is being used for an improper purpose, such as to harass.” *Carrington v.*

1 *Ariz. Corp. Comm'n*, 199 Ariz. 303, 305 ¶ 9 (App. 2000). In exercising the subpoena power,  
2 “the Commission may not act unreasonably.” *Id.*; see also A.A.C. R14-3-109(O) (authorizing  
3 the Commission to quash a subpoena that is “unreasonable or oppressive”).

4 Commissioner Burns’s subpoenas must be quashed for multiple reasons: they seek  
5 irrelevant information having nothing to do with the Commission’s jurisdiction to set rates;  
6 they are being used to harass the Companies for refusing to “voluntarily” comply with  
7 Commissioner Burns’s demands that they abstain from First Amendment-protected activities in  
8 this election cycle; they mandate testimony by the Companies’ CEO for the improper purpose  
9 of harassment, without regard to whether the CEO is the appropriate person given the  
10 information sought; and they promise to make public all information gained by Commissioner  
11 Burns, without regard to the confidentiality of that information.

12 **I. The Subpoenas Seek Documents and Testimony Irrelevant to the Stated Purpose**  
13 **of Commissioner Burns’ Investigation and Irrelevant to the Commission’s**  
14 **Regulatory Responsibilities.**

15 **A. The Documents Sought Are Irrelevant to Whether APS Has Used**  
16 **Ratepayer Funds for Political, Charitable, or Lobbying Expenditures.**

17 At various steps of the inquiry described above, Commissioner Burns has consistently  
18 described his purpose as one focused on ratepayer protection: he seeks assurance that any  
19 charitable, political, or lobbying expenditures are not being charged to ratepayers as  
20 recoverable expenses. For example, Commissioner Burns has stated:

- 21 • “I would like to ensure that only APS’s profits are being used for political  
22 speech.” Letter from Commissioner Burns 1, Docket No. AU-00000A-15-0309  
23 (Nov. 30, 2015) (Ex. C).
- 24 • “I intend to ... determine whether APS has used above-the-line funds for  
25 political, charitable, or other donations.” Notice of Investigation 1, Docket No.  
26 AU-00000A-15-0309 (Jan. 28, 2016) (Ex. I).
- 27 • “I now seek to continue my investigation to determine whether APS has used  
28 ratepayer funds for political, charitable or other expenditures.” Letter from  
Commissioner Burns 1, Docket No. E-01345A-16-0036 (Aug. 25, 2016) (Ex.  
A).

1 As APS has previously stated, it agrees that any charitable, political, or lobbying  
2 expenditures should not be treated as operating expenses recoverable in rates.<sup>5</sup>

3 The vast bulk of the information sought by the subpoenas is simply irrelevant to his  
4 stated purpose, and the Companies should not be required to produce it. *See Carrington*, 199  
5 Ariz. At 305 ¶ 9 (Commission subpoena should be quashed when it “seeks irrelevant  
6 information”). As Chairman Little has clearly explained, and as Commissioner Burns should  
7 well know, utility rates are set in rate case proceedings. In those proceedings, the Commission  
8 reviews the utility’s books and records for a “test year”—a specified twelve-month period—  
9 and uses data from that test year to determine the amount of revenue the utility requires in order  
10 to cover its costs. *See* Letter to Mark Brnovich, Arizona Attorney General, from Chairman  
11 Doug Little, Docket No. AU-00000A-15-0309 (Feb. 22, 2016) (Ex. M); Ariz. Admin. Code  
12 R14-2-103; *Tucson Elec. Power Co. v. Ariz. Corp. Comm’n*, 132 Ariz. 240, 246 (App. 1982)  
13 (describing Commission’s use of “test year from which to project the future capital  
14 expenditures and income needs of the utility” when considering rate adjustment). Specifically,  
15 the Commission examines all of the operating expenses claimed by the utility as well as the  
16 utility’s invested capital. The utility is permitted to earn a fair rate of return on the latter. The  
17 Commission Staff performs a detailed audit to ensure that the operating expenses claimed by  
18 the utility are in fact recoverable. In addition, an independent accounting firm reviews APS’s  
19 books to ensure that all expenses are properly classified. Based on the operating expenses

---

20  
21 <sup>5</sup> APS has made clear that it does not, has not, and will not seek to include any political  
22 contributions in the costs it seeks to recover from ratepayers. Letter from Donald E. Brandt 1,  
23 Docket No. AU-00000A-15-0309 (Dec. 29, 2015) (Ex. H). Likewise, the Commission has  
24 made clear that charitable contributions may not be included in rates. *See In re Application of*  
25 *Sulphur Springs Valley Elec. Coop., Inc.*, 2009 WL 2983260 (A.C.C. Sept. 8, 2009) (“Although  
26 we recognize their importance to the community, we do not believe that charitable  
27 contributions and sponsorships are appropriate above-the-line expenses that should be collected  
28 from ratepayers.”). Thus, any charitable contributions are made from non-operating, or below-  
the-line, funds that are not included in rates. Finally, regarding lobbying expenses, APS does  
not include such expenses in the costs it seeks to recover from customers. The Commission has  
held that if APS does seek to recover any of its lobbying costs in rates as useful to customers,  
“APS must provide the itemized lobbying costs associated with each benefit it alleges resulted  
from the specific lobbying activity.” *In re Arizona Pub. Serv. Co.*, 258 P.U.R.4th 353 (A.C.C.  
June 28, 2007).

1 claimed by the utility and deemed to be recoverable, and based on the utility's invested capital  
2 multiplied by a fair rate of return, the Commission determines the utility's revenue  
3 requirement. It then uses that revenue requirement to set the rates that the utility will collect  
4 going forward. *See Residential Util. Consumer Office v. Ariz. Corp. Comm'n*, 199 Ariz. 588,  
5 591 (App. 2001) (describing principle that rates should be sufficient to cover "utility's  
6 operating costs" and to give "a reasonable rate of return on the utility's investment").

7 APS's current rates were set based on a 2010 test year. In other words, the current rates  
8 reflect solely the operating expenses that APS incurred in 2010 and for which it claimed  
9 recovery, and that Commission Staff found to be recoverable in its audit. If APS incurred other  
10 expenses in 2010, but did not seek their recovery, those other expenses would not be reflected  
11 in rates. And any expenses APS incurred in 2011, 2012, 2013, 2014, and 2016 are irrelevant to  
12 the rates customers pay, because those rates—as just explained—are based solely on the 2010  
13 test year.<sup>6</sup> Currently, APS is seeking new rates, based on expenses incurred during 2015.  
14 Thus, with respect to these new rates, only operating expenses during this 2015 test year will be  
15 relevant to rates paid by customers. All other APS documents and all information requests  
16 regarding APS are irrelevant to the subpoenas' purported purpose. Pinnacle West, meanwhile,  
17 is not a regulated entity and does not recover its operating expenses in rates.<sup>7</sup> Its documents  
18 and the information requests regarding Pinnacle West likewise are not relevant.

19 Accordingly, the bulk of the information sought by Commissioner Burns is completely  
20 irrelevant to the purported purpose of the inquiry and the Companies should not be compelled  
21 to produce it.<sup>8</sup>

---

23 <sup>6</sup> The one exception are expenses that may be recovered through adjustor mechanisms.  
24 These expenses are specified in Commission Orders, are transparently calculated and updated  
in Commission dockets, and do not include the types of expenses at issue in the subpoena.

25 <sup>7</sup> Pinnacle West does provide business services to APS. To the extent APS seeks to  
26 recover in rates the cost of paying Pinnacle West for those business services, the relevant  
27 expenses would be submitted as part of the test-year ratemaking described above and subjected  
to Commission review and audit before they could be included in rates.

28 <sup>8</sup> As noted in the Objections that the Companies served on Commissioner Burns, APS  
will voluntarily produce certain documents identified by the subpoena, *see* Ex. A, Attach. A at

1           **B.     The Bulk of the Materials Sought by Commissioner Burns Are Irrelevant to**  
2           **the Commission's Regulatory Responsibilities.**

3           Commissioner Burns's subpoenas are improper for the additional reason that they are  
4 not "within [the Commission's] scope of authority." *Carrington*, 199 Ariz. at 305 ¶ 9. "[A]  
5 party may resist an administrative subpoena on any appropriate grounds[,] . . . includ[ing] that  
6 the inquiry is not within the agency's scope of authority." *People ex rel. Babbitt v. Herndon*,  
7 119 Ariz. 454, 456 (1978) (citing *United States v. Powell*, 379 U.S. 48 (1964)); *see also United*  
8 *States v. Morton Salt Co.*, 338 U.S. 632, 642 (1950).

9           The Commission has no legitimate regulatory interest in a company's charitable and  
10 political contributions and lobbying expenses, so long as a public service corporation is not  
11 seeking to treat those expenditures as recoverable operating expenses. Indeed, Commissioner  
12 Burns himself acknowledged in his initial letter to APS and Pinnacle West that the "laws  
13 governing campaign finance are not within the Commission's purview." Letter from  
14 Commissioners Bitter Smith and Burns 1, Docket No. AU-00000A-15-0309 (Sept. 8, 2015).

15           The Arizona Constitution delegated campaign finance regulations to the Legislature, not  
16 to the Corporation Commission. *See* Ariz. Const. art. 7, § 16. Regulation of campaign finance  
17 is governed by the "comprehensive statutory scheme" set forth in Arizona Revised Statutes  
18 §§ 16-901 to 16-961, *Pacion v. Thomas*, 225 Ariz. 168, 169 ¶ 6 (2010), and is administered by  
19 the Secretary of State and the Citizens Clean Elections Commission, not the Commission.  
20 Violations are punished by the Citizens Clean Elections Commission, Attorney General or  
21 county, city, or town attorney. A.R.S. §§ 16-924; 956(A)(7). The Commission has no  
22 authority to enforce any of the campaign finance statutes.

23           Under governing Arizona law, there is no requirement for corporations to disclose their  
24 contributions to groups that may make independent political expenditures. And groups that  
25 make independent expenditures need only disclose their donors if they qualify as "political  
26 committees" under Arizona law. *See* A.R.S. §§ 16-913, 16-914.02(K), 16-915. Commissioner

---

27 1—public documents immediately, and non-public documents upon the execution of a  
28 confidentiality agreement.

1 Burns, like any citizen, is free to advocate for a change in the law; but he may not use the  
2 subpoena power to override policy decisions that the Constitution assigns to the legislative  
3 branch. To hold otherwise would violate the Arizona Constitution's separation of powers.  
4 *State ex rel. Montgomery v. Mathis*, 231 Ariz. 103, 121 ¶ 66 (App. 2012) ("A violation of the  
5 separation of powers doctrine occurs when one branch of government usurps another branch's  
6 powers or prevents that other branch from exercising its authority."); *Williams v. Pipe Trades*  
7 *Indus. Program of Ariz.*, 100 Ariz. 14, 17 (1966) (holding that the "Corporation Commission's  
8 powers do not exceed those to be derived from a strict construction of the Constitution and  
9 implementing statutes."); *U.S. W. Commc'ns, Inc. v. Arizona Corp. Comm'n*, 197 Ariz. 16, 25  
10 ¶ 35 (App. 1999) (holding that an "incidental relationship" to ratemaking "is not enough" to  
11 give the Commission jurisdiction over an area assigned to another branch); *Tonto Creek Estates*  
12 *Homeowners Ass'n v. Ariz. Corp. Comm'n*, 177 Ariz. 49, 55-57 (App. 1993) (similar).

13 The Commission should make no mistake about the sweeping implications of allowing  
14 these subpoenas to stand: following Commissioner Burns's blueprint, any single  
15 Commissioner could decide to mandate the public disclosure of all charitable contributions and  
16 political expenditures of any corporation doing business in the State—precisely what the  
17 Arizona Legislature, acting within its assigned sphere, has declined to do. The separation of  
18 powers does not permit that kind of encroachment by the Commission on the powers assigned  
19 by the Constitution to the Legislature. Therefore, the subpoenas should be quashed. *See*  
20 *Carrington*, 199 Ariz. at 305 ¶ 9 (subpoena should be quashed when "the inquiry is not within  
21 [the Commission's] scope of authority").

## 22 **II. The Subpoenas Violate the First Amendment and Arizona Law.**

23 The irrelevance of much of the information sought by the subpoenas to Commissioner  
24 Burns's stated purpose simply highlights the real purpose: to deter political participation by the  
25 Companies in the current election season, during which Commissioner Burns is running for  
26 reelection. Commissioner Burns stated this purpose clearly when he explained that his  
27 investigation is intended to prevent "utility overspending and overparticipating, if you will, in  
28

1 the elections of Corporation Commissioner.” Transcript of Staff Meeting: Special Open  
2 Meeting 59, Docket No. AU-00000E-16-0270 (Aug. 11, 2016) (Ex. L).

3 The First Amendment and the Arizona Constitution do not allow a government official  
4 to subpoena a company’s records in order to prevent that company from “overparticipating” in  
5 an election. See *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000) (“[G]overnment officials  
6 violate [the First Amendment] when their acts would chill or silence a person of ordinary  
7 firmness from future First Amendment activities.”). “[I]t is our law and our tradition that more  
8 speech, not less, is the governing rule.” *Citizens United v. Fed. Election Comm’n*, 558 U.S.  
9 310, 361 (2010). Indeed, it is hard to imagine a clearer example than this one of how the  
10 subpoena power can be abused to violate First Amendment rights. These subpoenas present  
11 precisely the situation that the State of Arizona told the United States Supreme Court that it  
12 tries to *prevent* by not requiring mandatory disclosure of campaign expenditures: an effort by a  
13 “government official ... to single out their political opponents for retribution.”<sup>9</sup>

14 **A. The Subpoenas Violate the First Amendment.**

15 **1. The Subpoenas Are Subject to “Exacting Scrutiny.”**

16 The U.S. Supreme Court has long emphasized that “[s]peech is an essential mechanism  
17 of democracy, for it is the means to hold officials accountable to the people.” *Citizens United*,  
18 558 U.S. at 339; *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (“Discussion of public issues and  
19 debate on the qualifications of candidates are integral to the operation of the system of  
20 government established by our Constitution.”). The First Amendment “has its fullest and most  
21 urgent application to speech uttered during a campaign for political office.” *Citizens United*,  
22 558 U.S. at 339 (quoting *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214,  
23 223 (1989)) (internal quotation marks omitted). In the landmark *Citizens United* decision, the  
24 U.S. Supreme Court held that “[c]orporations and other associations, like individuals,  
25 contribute to the ‘discussion, debate, and the dissemination of information and ideas’ that the  
26

---

27 <sup>9</sup> Brief of the States of Arizona, Michigan, and South Carolina as *Amici Curiae* in  
28 Support of Petitioner at 2, *Center for Competitive Politics v. Harris*, No. 15-152 (U.S. Sept. 20,  
2015).



1 First Amendment seeks to foster.” *Id.* at 343 (quoting *First Nat’l Bank of Boston v. Bellotti*,  
2 435 U.S. 765, 783 (1978)).

3 The Supreme Court has also long recognized the strong First Amendment interests in  
4 anonymous speech. As the Court has explained, “even in the field of political rhetoric, where  
5 the identity of the speaker is an important component of many attempts to persuade, the most  
6 effective advocates have sometimes opted for anonymity.” *McIntyre v. Ohio Elections*  
7 *Comm’n*, 514 U.S. 334, 342-43 (1995). And the “decision to remain anonymous . . . is an  
8 aspect of the freedom of speech protected by the First Amendment.” *Id.* at 342. The Court  
9 recognized that compelled disclosure of independent expenditures or charitable contributions  
10 can also impinge on associational rights protected by the First Amendment. *Buckley*, 424 U.S.  
11 at 64; *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 744 (2008). “The First Amendment  
12 protects political association as well as political expression,” *Buckley*, 424 U.S. at 15 (citing  
13 *NAACP v. Alabama*, 357 U.S. 449 (1958)), and the right to political association includes  
14 association through financial contribution to political activities or charitable organizations. *Id.*  
15 at 65.

16 Recognizing these strong First Amendment interests, the Supreme Court has subjected  
17 disclosure requirements to “exacting scrutiny.” *Citizens United*, 558 U.S. at 366-67.  
18 Specifically, a disclosure requirement must, first, be justified by a “sufficiently important  
19 government interest,” *id.*, that “reflect[s] the seriousness of the actual burden on First  
20 Amendment rights.” *Davis*, 554 U.S. at 744 (emphasis added); *John Doe #1 v. Reed*, 561 U.S.  
21 186, 196 (2010). Second, the government interest must have a “substantial relation” to the  
22 disclosure requirement. *Citizens United*, 558 U.S. at 366-67.<sup>10</sup>

23  
24  
25 <sup>10</sup> “Exacting scrutiny” has been applied to prospective, evenly applied disclosure  
26 requirements, such as the statute at issue in *Citizens United*. Stricter scrutiny—requiring a  
27 compelling government interest and disclosure narrowly tailored to that interest—should apply  
28 to the subpoenas’ disclosure demand because it is targeting past conduct and is applied  
discriminatorily against only certain entities. Although a stricter form of scrutiny should apply  
here, a separate analysis is unnecessary because the subpoenas fail to survive the “exacting  
scrutiny” required for non-discriminatory disclosure requirements.

1                   **2. The Subpoenas Cannot Survive Exacting Scrutiny.**

2                   **a. The Subpoenas Are Not Justified by Any Important**  
3                   **Government Interest.**

4           The subpoenas cannot withstand First Amendment scrutiny because they are not  
5 justified by any important governmental interest—let alone one sufficiently important to justify  
6 the serious burden placed on the Companies’ First Amendment rights. As an initial matter, the  
7 subpoenas plainly cannot be justified by the Commission’s interests in protecting ratepayers  
8 because, as discussed above, the subpoenas are massively overbroad with respect to that  
9 interest. *See Ariz. Right to Life Political Action Comm. v. Bayless*, 320 F.3d 1002, 1010-11  
10 (9th Cir. 2003) (invalidating statute burdening political speech where fit between statute and  
11 purported purpose “is poor at best”); *Am. Civil Liberties Union of Nevada v. Heller*, 378 F.3d  
12 979, 1000 (9th Cir. 2004) (invalidating law requiring certain groups to reveal names of  
13 financial sponsors as overbroad). Requiring the Companies to produce information that can  
14 have no bearing on the rates being charged to customers bears no “substantial relation” to the  
15 Commission’s interest in regulating rates. *Citizens United*, 558 U.S. at 366-67.

16           Nor can the subpoenas be justified on the ground that they will help to prevent some  
17 entities from “overparticipating” in the electoral process, to use Commissioner Burns’s phrase.  
18 The Supreme Court has held that the government has no legitimate interest in trying to prevent  
19 “distortion” of the marketplace of ideas by limiting speech; instead, the solution is more  
20 speech. The Constitution “entrust[s] the people to judge what is true and what is false.”  
21 *Citizens United*, 558 U.S. at 354-55. The Supreme Court elaborated: “All speakers ... use  
22 money amassed from the economic marketplace to fund their speech. The First Amendment  
23 protects the resulting speech, even if it was enabled by economic transactions with persons or  
24 entities who disagree with the speaker’s ideas.” *Id.* at 351. Commissioner Burns may not  
25 agree, but that is the law.

26           Commissioner Burns has also suggested at times that the subpoenas are justified by the  
27 need to prevent the appearance of corruption. To be clear, Commissioner Burns has expressly  
28 stated that he does not believe that any of the current Commissioners have been unduly

1 influenced. Thus, the purpose of the subpoenas is not to identify *quid pro quo* corruption.  
2 Instead, Commissioner Burns claims to be motivated by the desire to prevent an appearance of  
3 undue influence that might arise in the future. Transcript of Staff Meeting: Special Open  
4 Meeting 20, Docket No. AU-00000E-16-0270 (Aug. 11, 2016) (Ex. L) (“I’m not telling  
5 anybody that you’re unduly influenced. I’m concerned about the future of who comes to run  
6 for the Corporation Commission and how they are perceiving these large sums of money being  
7 pumped into these campaigns.”).

8       However, the U.S. Supreme Court has made crystal clear that “independent  
9 expenditures, including those made by corporations, *do not give rise to corruption or the*  
10 *appearance of corruption.*” *Citizens United*, 558 U.S. at 357 (emphasis added). In fact, the  
11 Supreme Court continued, “there is only scant evidence that independent expenditures even  
12 ingratiate.... Ingratiation and access, in any event, are not corruption.” *Id.* at 360. Thus, the  
13 Supreme Court held, the government’s sufficiently important interest is “limited to *quid pro*  
14 *quo* corruption,” *id.* at 359, and does not extend to the mere appearance of impropriety. The  
15 Court explained that, with respect to independent expenditures, “[t]he absence of  
16 prearrangement and coordination ... with the candidate or his agent ... alleviates the danger  
17 that expenditures will be given as a *quid pro quo* for improper commitments from the  
18 candidate.” *Id.* at 357. The Court further explained that such expenditures are nothing more  
19 than “political speech presented to the electorate” in attempt to “persuade voters.” *Id.* at 360.  
20 The Supreme Court’s holding applies with even greater force to anonymous contributions  
21 received by independent 501(c)(4) social welfare organizations, which then decide how to use  
22 the funds they receive in support of those organizations’ own advocacy goals and agendas.  
23 Such contributions are two steps removed from a candidate and, under the Supreme Court’s  
24 reasoning, pose no concern regarding undue influence.

25                   ***b. The Subpoenas Are Intended to Harass.***

26       Although generally applicable disclosure requirements concerning election-related  
27 expenditures may sometimes survive exacting scrutiny when supported by a sufficiently  
28

1 important governmental interest (which Commissioner Burns has not articulated here), the  
2 Commission is faced here with quite a different situation: a forced disclosure requirement,  
3 aimed selectively at two companies after they refused to “voluntarily” abstain from political  
4 speech, against a backdrop in which such disclosure is *not* generally required. It is well-  
5 established that a disclosure requirement violates the First Amendment when it is “adopted or is  
6 enforced in order to harass,” *Harris v. Ctr. for Competitive Politics*, 784 F.3d 1307, 1313 (9th  
7 Cir. 2015); *accord Citizens United*, 558 U.S. at 370, and that is the case here.

8 Specifically, Commissioner Burns’s subpoenas differ from typical disclosure  
9 requirements in two critical ways, each of which suffices to establish a First Amendment  
10 violation.

11 *First*, the subpoenas violate First Amendment protections against regulations of speech  
12 based on the viewpoint and identity of the speaker. The subpoenas intentionally target only  
13 two entities and are aimed specifically at preventing “*utility* overspending and overparticipating  
14 ... in the elections of Corporation Commissioner.” Transcript of Staff Meeting: Special Open  
15 Meeting 59, Docket No. AU-00000E-16-0270 (Aug. 11, 2016) (Ex. L) (emphasis added).  
16 Indeed, from the very start of his inquiry, he has specifically focused on “APS’s alleged  
17 contributions to political campaigns.” Letter from Commissioners Bitter Smith and Burns 1,  
18 Docket No. AU-00000A-15-0309 (Sept. 8, 2015). Other speakers with other viewpoints, such  
19 as the rooftop solar industry that has spent heavily on Arizona Corporation Commission  
20 elections, including in support of Commissioner Burns’s own campaign for reelection,<sup>11</sup> would  
21 not be subject to any disclosure requirement. Such selective regulation flatly violates the First  
22 Amendment. “[T]he First Amendment stands against attempts to disfavor certain subjects or  
23 viewpoints. Prohibited, too, are restrictions distinguishing among different speakers, allowing  
24 speech by some but not others. As instruments to censor, these categories are interrelated:  
25 Speech restrictions based on the identity of the speaker are all too often simply a means to  
26 control content.” *Citizens United*, 558 U.S. at 340 (internal citations, quotation marks omitted);

27 <sup>11</sup> See, e.g., Howard Fischer, *Solar Interests Pour Money Into Corp Comm Race*,  
28 Capitol Media Services, Aug. 29, 2016.

1 *see also Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828-29 (1995)  
2 (“Discrimination against speech because of its message is presumed to be unconstitutional . . .  
3 The government must abstain from regulating speech when the specific motivating ideology or  
4 the opinion or perspective of the speaker is the rationale for the restriction.”); *Brown v. Entm’t*  
5 *Merchants Ass’n*, 564 U.S. 786, 802 (2011) (government violates the First Amendment when a  
6 “particular speaker” is “singled out . . . for disfavored treatment”).

7       *Second*, the subpoenas violate the First Amendment’s protections against retaliatory  
8 measures intended to punish or deter speech. The effort to force disclosure is clearly  
9 retribution for APS’s refusal to commit to refrain from future political expenditures.  
10 Commissioner Burns’s January 28, 2016 letter indicated that he was “broaden[ing]” his inquiry  
11 and “requir[ing]” cooperation because APS had previously “rejected” his request to voluntarily  
12 refrain from making contributions and then had “declined” to provide information regarding  
13 prior contributions. Notice of Investigation 1, Docket No. AU-00000A-15-0309 (Jan. 28,  
14 2016) (Ex. I). In other words, the subpoenas are part of an effort to discourage the exercise of  
15 protected speech activity, and to do so because of suspicions that APS spent money to support  
16 particular candidates in the 2014 election. That kind of retaliation is plainly unlawful. *See*  
17 *Wilkie v. Robbins*, 551 U.S. 537, 555 (2007) (noting the “longstanding recognition that the  
18 Government may not retaliate for exercising First Amendment speech rights”).

19       **B. The Subpoenas Violate the Arizona Constitution.**

20       The improper motivation behind the subpoenas violates the Arizona Constitution as  
21 well. Arizona courts have recognized that an administrative subpoena must be quashed when it  
22 is being used as a tool to harass and retaliate, rather than to further an agency’s legitimate  
23 purposes. The Arizona Supreme Court has made clear that the Commission cannot use  
24 subpoenas to “harass a company and, for reasons unrelated to the agency’s legitimate purposes,  
25 obstruct or destroy its ability to conduct its business.” *Polaris Int’l Metals Corp. v. Ariz. Corp.*  
26 *Comm’n*, 133 Ariz. 500, 507 (1982); *accord Carrington*, 199 Ariz. at 305 ¶ 9.

1 **III. The Subpoena's Demand for Testimony by the APS and Pinnacle West CEO Is**  
2 **Wholly Improper.**

3 Commissioner Burns's subpoenas compound their overbroad and improper document  
4 request with a demand to depose Donald Brandt, the CEO of APS and Pinnacle West. For the  
5 reasons set forth above, the request for a deposition of Mr. Brandt should be quashed along  
6 with the improper demand for documents. But even with respect to the narrow category of  
7 documents relevant to APS's test-year expenses reflected in rates, Commissioner Burns should  
8 not be able to handpick the person to answer questions about those documents.

9 The law constrains parties seeking depositions (by subpoena or otherwise) from  
10 "imposing undue burden" and protects witnesses from "annoyance, embarrassment, [or]  
11 oppression." Ariz. R. Civ. P. 45(e)(1); Ariz. R. Civ. P. 26(c)(1); *Am. Family Mut. Ins. Co. v.*  
12 *Grant*, 222 Ariz. 507, 513 (App. 2009) (requiring less intrusive means of discovery to avoid  
13 harassment). The Commission adheres to these principles as much as the state court. A.A.C.  
14 R14-3-109(P) ("The Commission, a Commissioner, or any party to any proceeding before it  
15 may cause the depositions of witnesses to be taken in the manner prescribed by law and of the  
16 civil procedure for the Superior Court of the state of Arizona.").

17 Courts have frequently concluded that depositions of high-ranking company officials  
18 are unduly burdensome and unwarranted. *See, e.g., Baine v. Gen. Motors Corp.*, 141 F.R.D.  
19 332, 334 (M.D. Ala. 1991) (noting that the "legal authority is fairly unequivocal" that sharp  
20 limits are placed on the ability to depose high-ranking officials). Efforts to depose high-level  
21 executives "create[] a tremendous potential for abuse or harassment." *Apple Inc. v. Samsung*  
22 *Elecs. Co., Ltd.*, 282 F.R.D. 259, 263 (N.D. Cal. 2012). A party should not be permitted to  
23 force the deposition of a highly placed executive unless the requesting party can show that the  
24 executive has "knowledge that is both unique and relevant." *Guan Ming Lin v. Benihana Nat'l*  
25 *Corp.*, No. 10 CIV. 1335, 2010 WL 4007282, at \*2 (S.D.N.Y. Oct. 5, 2010) (issuing order to  
26 prohibit deposition of high-ranking executive when executive had "no special personal  
27 knowledge" and others could testify to same topics).

1 By going straight to the top of the organization without regard to which employees  
2 would actually be best to provide information, Commissioner Burns has only underscored that  
3 his true purpose is to orchestrate political theater and harass the Companies, rather than seek  
4 out information. There is no basis set forth in the subpoenas (nor could there be) that Mr.  
5 Brandt is the proper person to address the topics raised. The subpoenas seek to ensure that  
6 "ratepayer funds" were not used for political or charitable contributions. But resolving this  
7 question is fundamentally an accounting issue. Under these circumstances, if *any* deposition is  
8 allowed, it should be of a person with relevant knowledge of how APS accounted for its  
9 expenses during the 2010 and 2015 test years. *See Salter v. Upjohn Co.*, 593 F.2d 649, 651  
10 (5th Cir. 1979) (affirming order prohibiting executive deposition until lower-level employees  
11 deposed); *Am. Family Mut. Ins Co.*, 222 Ariz. at 513 (prohibiting potentially harassing  
12 discovery until "litigants . . . at least initially pursue less intrusive discovery").

13 **IV. Commissioner Burns' Threat to Publicly Disseminate the Information Gathered**  
14 **by the Subpoenas Underscores Their Improper Purpose and Violates Commission**  
15 **Rules.**

16 In issuing the subpoenas, Commissioner Burns declared his intention to make publicly  
17 available all the information produced. Not only does this threat underscore the true improper  
18 purpose of his subpoena, which is one of harassment and retaliation, but it also flagrantly  
19 violates the Commission's rules and the statutory protections of confidential business  
20 information.

21 Arizona law protects the confidentiality of sensitive business data, such as trade secrets,  
22 even if that data is disclosed to the Corporation Commission. *See A.R.S. § 40-204(C)* ("No  
23 information furnished to the commission by a public service corporation, except matters  
24 specifically required to be open to public inspection, shall be open to public inspection or made  
25 public"). To be made public, there must be due process: an "order of the commission entered  
26 after notice" or an order entered "in the course of a hearing or proceeding." *Id.* Indeed, the  
27 Commission itself has established rules authorizing its staff to enter confidentiality agreements  
28 with reporting utility companies. *See A.A.C. R14-2-703(L)* (establishing procedure to enter

1 agreements protecting confidentiality of information reported to Commission). Confidentiality  
2 agreements are routine in rate cases and widely accepted. There is no basis for Commissioner  
3 Burns to unilaterally make confidential information public. In fact, such an act would be  
4 punishable as a crime. *See* A.R.S. § 40-204(D). Commissioner Burns's threat of disclosure is  
5 yet more evidence of the improper nature of the whole subpoena.

6 **V. In the Alternative, the Commission Should Stay Compliance with the Subpoenas**  
7 **and Decline to Decide the Issues Raised in This Motion.**

8 Because Commissioner Burns' subpoenas are literally unprecedented—to the  
9 Companies' knowledge no sitting Commissioner has ever issued a subpoena outside of an  
10 investigation authorized by the Commission as a whole—the procedural path for challenging  
11 the subpoenas is unmarked. The Companies believe this Commission has authority to quash  
12 the subpoena, and thus have filed this motion. Contemporaneously with this motion, the  
13 Companies have also filed a declaratory judgment action and special action in the superior  
14 court, seeking to enjoin Commissioner Burns from enforcing his subpoena.

15 As an alternative to deciding the issues raised in this motion, the Commission could  
16 stay compliance with the subpoenas in order to preserve the status quo, and issue an order  
17 declining to decide this motion and prospectively declining to decide any petition for rehearing.  
18 The Commission's resources are already fully committed to an over-full slate of rate cases and  
19 significant public policy issues. Having a court resolve this discrete issue would reduce the  
20 burden on the Commission. It would also introduce a neutral arbiter to this subject matter that  
21 is readily equipped to hear all sides of this issue.

22 Should the Commission decline to decide the issues raised in this motion, the  
23 Companies respectfully request that the Commission issue an order staying the Companies'  
24 compliance with the subpoenas in order to preserve the status quo while litigation is pending.

25 **CONCLUSION**

26 Despite the significant defects in the subpoenas, APS will voluntarily produce certain  
27 publicly available documents identified by the subpoenas, *see* Ex. A, Attach. A at 1, and, upon  
28



1 execution of the legally required confidentiality agreement, certain non-public documents.  
2 APS will also produce a knowledgeable employee to testify regarding those documents.

3 The Companies respectfully request that the Commission quash all other portions of the  
4 subpoenas, or, in the alternative, issue an order staying compliance with the subpoenas,  
5 declining to decide the issues raised in this motion, and prospectively declining to decide a  
6 petition for rehearing.

7 DATED this 9th day of September, 2016.

8 OSBORN MALEDON, P.A.

9 By Mz OJ  
10 Mary R. O Grady  
11 Joseph N. Roth  
12 2929 North Central Avenue, 21st Floor  
13 Phoenix, Arizona 85012-2793

14 JENNER & BLOCK  
15 Matthew E. Price (*Pro Hac Vice* to be filed)  
16 1099 New York Avenue, NW Suite 900  
17 Washington, DC 20001-4412

18 Attorneys for Plaintiffs

19 Original and 13 copies of the foregoing  
20 filed this 9th day of September, 2016, with:

21 Docket Control  
22 Arizona Corporation Commission  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007

25 Copies of the foregoing hand-delivered/mailed/e-mailed  
26 this 9th day of September, 2016, to:

27 Teena Jibilian  
28 Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
400 West Congress  
Tucson, Arizona 85701

1 Maureen Scott  
Legal Division  
2 Arizona Corporation Commission  
1200 West Washington Street  
3 Phoenix, Arizona 85007

4 Thomas Broderick, Director  
Utilities Division  
5 Arizona Corporation Commission  
1200 West Washington Street  
6 Phoenix, Arizona 85007

7 Thomas A. Loquvam  
8 Thomas L. Mumaw  
9 Melissa M. Krueger  
Pinnacle West Capital Corporation  
10 P.O. Box 53999, MS 8695  
Phoenix, AZ 85072

11 C. Webb Crockett  
12 Patrick Black  
13 Fennemore Craig, PC  
2394 East Camelback Road, Suite 600  
14 Phoenix, Arizona 85016  
[wcrockett@fclaw.com](mailto:wcrockett@fclaw.com)  
15 [pblack@fclaw.com](mailto:pblack@fclaw.com)  
[khiggins@energystrat.com](mailto:khiggins@energystrat.com)  
16 **Consented to Service by Email**

17 Greg Eisert, Director  
18 Steven Puck, Director  
Government Affairs  
19 Sun City Homeowners Association  
[gregeisert@gmail.com](mailto:gregeisert@gmail.com)  
20 [steven.puck@cox.net](mailto:steven.puck@cox.net)  
21 **Consented to Service by Email**

22 Timothy M. Hogan  
Arizona Center for Law in the Public Interest  
23 202 E. McDowell Road, Suite 153  
Phoenix, Arizona 85004  
24 [thogan@aclpi.org](mailto:thogan@aclpi.org)  
25 [ken.wilson@westernresources.org](mailto:ken.wilson@westernresources.org)  
[schlegelj@aol.com](mailto:schlegelj@aol.com)  
26 [ezuckerman@swenergy.org](mailto:ezuckerman@swenergy.org)  
[bbaatz@aceee.org](mailto:bbaatz@aceee.org)  
27 [briana@votesolar.org](mailto:briana@votesolar.org)  
28 **Consented to Service by Email**

1 Meghan H. Grabel  
2 Osborn Maledon, PA  
3 2929 North Central Avenue  
4 Phoenix, Arizona 85012  
5 [mgrabel@omlaw.com](mailto:mgrabel@omlaw.com)  
6 [gyaquinto@arizonaic.org](mailto:gyaquinto@arizonaic.org)  
7 **Consented to Service by Email**

8 Patricia Ferre  
9 P.O. Box 433  
10 Payson, Arizona 85547

11 Richard Gayer  
12 526 W. Wilshire Drive  
13 Phoenix, Arizona 85003  
14 [rgayer@cox.net](mailto:rgayer@cox.net)  
15 **Consented to Service by Email**

16 Warren Woodward  
17 55 Ross Circle  
18 Sedona, Arizona 86336  
19 [w6345789@yahoo.com](mailto:w6345789@yahoo.com)  
20 **Consented to Service by Email**

21 Anthony L. Wanger  
22 Alan L. Kierman  
23 Brittany L. DeLorenzo  
24 IO Data Centers, LLC  
25 615 North 48<sup>th</sup> Street  
26 Phoenix, Arizona 85008

27 Craig A. Marks  
28 Craig A. Marks, PLC  
10645 N. Tatum Blvd., Suite 200-676  
Phoenix, Arizona 85028  
[craig.marks@azbar.org](mailto:craig.marks@azbar.org)  
[pat.quinn47474@gmail.com](mailto:pat.quinn47474@gmail.com)  
**Consented to Service by Email**

Albert Gervenack  
Rob Robbins  
Sun City West Property Owners & Residents Association  
13815 Camino Del Sol  
Sun City West, Arizona 85375  
[Al.gervenack@porascw.org](mailto:Al.gervenack@porascw.org)  
[Rob.robbs@porascw.org](mailto:Rob.robbs@porascw.org)  
**Consented to Service by Email**

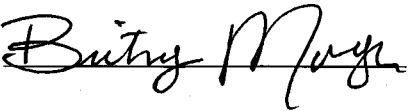
1 Tom Harris, Chairman  
2 AriSEIA  
3 2122 W. Lone Cactus Dr., Suite 2  
4 Phoenix, AZ 85027  
5 [Tom.harris@ariseia.org](mailto:Tom.harris@ariseia.org)  
6 **Consented to Service by Email**  
7  
8 Cynthia Zwick  
9 Arizona Community Action Association  
10 2700 North 3<sup>rd</sup> Street, Suite 3040  
11 Phoenix, Arizona 85004  
12  
13 Daniel W. Pozefsky  
14 Chief Counsel  
15 Residential Utility Consumer Office  
16 1110 West Washington, Suite 220  
17 Phoenix, AZ 85007  
18  
19 Jason Y. Moyes  
20 Jay I. Moyes  
21 Moyes Sellers & Hendricks  
22 1850 N. Central Ave., Suite 1100  
23 Phoenix, Arizona 85004  
24 [jasonmoyes@law-msh.com](mailto:jasonmoyes@law-msh.com)  
25 [jim@harcuvar.com](mailto:jim@harcuvar.com)  
26 [jimoyes@law-msh.com](mailto:jimoyes@law-msh.com)  
27 **Consented To Service By Email**  
28  
29 Kurt J. Boehm  
30 Jody Kyler Cohn  
31 Boehm, Kurtz & Lowry  
32 36 E. Seventh Street, Suite 1510  
33 Cincinnati, OH 45202  
34  
35 John William Moore, Jr.  
36 1321 North 16<sup>th</sup> Street  
37 Phoenix, AZ 85020  
38  
39 Charles Wesselhoft, Deputy County Attorney  
40 Pima County Attorneys' Office  
41 32 North Stone Ave., Suite 2100  
42 Tucson, Arizona 85701  
43 [Charles.Wesselhoft@pcao.pima.gov](mailto:Charles.Wesselhoft@pcao.pima.gov)  
44 **Consented to Service by Email**

1 Giancarlo G. Estrada  
2 Kamper Estrada, LLP  
3 3030 N. 3<sup>rd</sup> Street, Suite 770  
4 Phoenix, AZ 85012

5 Court S. Rich  
6 Rose Law Group pc  
7 7144 E. Stetson Dr., Suite 300  
8 Scottsdale, AZ 85251

9 Scott Wakefield  
10 Hienton & Curry, PLLC  
11 5045 N 12th Street, Suite 110  
12 Phoenix, Arizona 85014-3302  
13 [swakefield@hclawgroup.com](mailto:swakefield@hclawgroup.com)  
14 [mlougee@hclawgroup.com](mailto:mlougee@hclawgroup.com)  
15 [stephen.chriss@wal-mart.com](mailto:stephen.chriss@wal-mart.com)  
16 [greg.tillman@wal-mart.com](mailto:greg.tillman@wal-mart.com)  
17 [chris.hendrix@wal-mart.com](mailto:chris.hendrix@wal-mart.com)

18 **Consented to Service by Email**

19 

# EXHIBITS

# **Exhibit No. A**

**COMMISSIONERS**  
DOUG LITTLE - Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN



**ARIZONA CORPORATION  
COMMISSION**

**COMMISSIONER**  
Direct Line: (602) 542-3682  
Email: RBurns-web@azcc.gov

**ORIGINAL**

August 25, 2016

Re: Arizona Public Service Company, Docket No. E-01345A-16-0036 / **E-01345A-16-0123**

Dear Mr. Brandt:

For nearly two years now, APS has refused to voluntarily answer my questions about any political expenditures that APS/Pinnacle West may have made. Consequently, it is necessary for me to proceed in a more direct way.

I now seek to continue my investigation to determine whether APS has used ratepayer funds for political, charitable or other expenditures. This includes all expenditures made by APS, Pinnacle West and under APS's brand name for any purpose.

In his May 4, 2016 legal opinion, Attorney General Brnovich specifically stated that an individual Commissioner's § 4 constitutional authority "could relate to an affiliate of a [public service corporation] only if the affiliate is a Public Company." Ariz. Att'y Gen. Op. 116-130 at 12. In other words, the constitutional powers conferred to individual commissioners in §4 extend to a publicly traded company, which Pinnacle West is.

Please see the attached subpoenas outlining the information I seek. I look forward to your full compliance in this matter. Please be aware that I intend to publicly file all documents related to this investigation.

Sincerely,

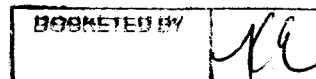
A handwritten signature in cursive script, appearing to read "Robert L. Burns".

Robert L. Burns  
Commissioner

Arizona Corporation Commission

**DOCKETED**

AUG 25 2016



**RECEIVED**  
**AZ CORP COMMISSION**  
**DOCKET CONTROL**  
2016 AUG 25 A 11:48

cc: Service list from E-01345A-16-0036



BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS**

DOUG LITTLE - Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

IN THE MATTER OF THE APPLICATION  
OF ARIZONA PUBLIC SERVICE COMPANY  
FOR A HEARING TO DETERMINE THE  
FAIR VALUE OF THE UTILITY PROPERTY  
OF THE COMPANY FOR RATEMAKING  
PURPOSES, TO FIX A JUST AND  
REASONABLE RATE OF RETURN  
THEREON, TO APPROVE RATE  
SCHEDULES DESIGNED TO DEVELOP  
SUCH RETURN.

DOCKET NO. E-01345A-16-0036

**SUBPOENA  
SUBPOENA DUCES TECUM**

TO: Arizona Public Service Company  
P.O. Box 53999  
Phoenix, AZ 85072

400 North 5<sup>th</sup> Street  
Phoenix, AZ 85004

Donald E. Brandt  
Chairman, President and Executive Officer  
Arizona Public Service Company & Pinnacle West Capital Corporation  
Mail Station 9042  
P.O. Box 53999  
Phoenix, AZ 85072

In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding the documents and information requests set forth in Attachment A.

YOU ARE HEREBY COMMANDED, pursuant to Article XV, Section 4 of the Arizona Constitution, A.R.S. §§ 40-241, -243, -244, and Ariz. R. Civ. P. 45, to appear and testify under oath in connection with the matters set forth in Attachment A (see Attachment B).

BEFORE WHOM APPEARANCE TO BE MADE:

Robert L. Burns, Commissioner  
Arizona Corporation Commission  
1200 W. Washington Phoenix, AZ 85007

I. YOU ARE COMMANDED to bring with you and produce for inspection and copying the following:

See Attachment A.

DATE AND TIME OF PRODUCTION OF DOCUMENTS FOR INSPECTION:

September 15, 2016 at 10:00 a.m.

PLACE OF APPEARANCE: Arizona Corporation Commission  
2<sup>nd</sup> Floor Conference Room  
1200 W. Washington  
Phoenix, AZ 85007

II. YOU ARE COMMANDED to bring with you written responses to the following questions:

See Attachment A.

DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES:

September 15, 2016 at 10:00 a.m.

PLACE OF APPEARANCE: Arizona Corporation Commission  
2<sup>nd</sup> Floor Conference Room  
1200 W. Washington  
Phoenix, AZ 85007

III. YOU ARE COMMANDED to appear and give testimony concerning:

See Attachment A.

In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding the documents and information requests set forth in Attachment A.

1 DATE AND TIME OF APPEARANCE: October 6, 2016 at 10:00 a.m.

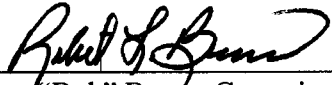
2 PLACE OF APPEARANCE: Arizona Corporation Commission  
3 Hearing Room #1  
4 1200 W. Washington  
Phoenix, AZ 85007

5 For your convenience, prior to the appearance date for production of documents and written responses  
6 requested in I. and II. above, you may turn in the subpoenaed documents and responses to  
7 Commissioner Burns' Office located at the above address. If you elect to do this, you need not  
8 appear personally at the appointed place and time on September 15, 2016. Personal appearance(s),  
9 however, are required on October 6, 2016 at 10:00 a.m. as directed in III.

9 YOU HAVE BEEN SUBPOENAED BY: Robert L. Burns, Commissioner  
10 Arizona Corporation Commission  
11 1200 W. Washington Phoenix, AZ 85007  
12 Telephone: 602-542-3682  
13 E-mail: [rburns@azcc.gov](mailto:rburns@azcc.gov)

12 DISOBEDIENCE OF THIS SUBPOENA constitutes contempt of the Arizona Corporation  
13 Commission and may subject you to further proceedings and penalties under law.

14 Issued this 25 day of August, 2016.

16   
17 Robert "Bob" Burns, Commissioner  
18 Arizona Corporation Commission

19  
20  
21  
22  
23  
24  
25 Persons with a disability may request a reasonable accommodation such as a sign language interpreter,  
26 as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive  
27 Assistant to the Executive Director, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).  
28 Requests should be made as early as possible to allow time to arrange the accommodation.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 DOUG LITTLE - Chairman

4 BOB STUMP

5 BOB BURNS

6 TOM FORESE

7 ANDY TOBIN

8 IN THE MATTER OF THE APPLICATION  
9 OF ARIZONA PUBLIC SERVICE  
10 COMPANY FOR A HEARING TO  
11 DETERMINE THE FAIR VALUE OF THE  
12 UTILITY PROPERTY OF THE COMPANY  
13 FOR RATEMAKING PURPOSES, TO FIX  
14 A JUST AND REASONABLE RATE OF  
15 RETURN THEREON, TO APPROVE RATE  
16 SCHEDULES DESIGNED TO DEVELOP  
17 SUCH RETURN.

DOCKET NO. E-01345A-16-0036

**SUBPOENA  
SUBPOENA DUCES TECUM**

18 TO: Pinnacle West Capital Corporation  
19 400 North 5th Street  
20 Phoenix, AZ 85004

21 Donald E. Brandt  
22 Chairman, President and Executive Officer  
23 Arizona Public Service Company & Pinnacle West Capital Corporation  
24 Mail Station 9042  
25 P.O. Box 53999  
26 Phoenix, AZ 85072

27 In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding  
28 the documents and information requests set forth in Attachment A.

29 YOU ARE HEREBY COMMANDED, pursuant to Article XV, Section 4 of the Arizona  
30 Constitution, A.R.S. §§ 40-241, -243, -244, and Ariz. R. Civ. P. 45, to appear and testify under  
31 oath in connection with the matters set forth in Attachment A (see Attachment B).

BEFORE WHOM APPEARANCE TO BE MADE:

Robert L. Burns, Commissioner  
Arizona Corporation Commission  
1200 W. Washington Phoenix, AZ 85007

**I. YOU ARE COMMANDED to bring with you and produce for inspection and copying the following:**

See Attachment A.

DATE AND TIME OF PRODUCTION OF DOCUMENTS FOR INSPECTION:

September 15, 2016 at 10:00 a.m.

PLACE OF APPEARANCE: Arizona Corporation Commission  
2<sup>nd</sup> Floor Conference Room  
1200 W. Washington  
Phoenix, AZ 85007

**II. YOU ARE COMMANDED to bring with you written responses to the following questions:**

See Attachment A.

DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES:

September 15, 2016 at 10:00 a.m.

PLACE OF APPEARANCE: Arizona Corporation Commission  
2<sup>nd</sup> Floor Conference Room  
1200 W. Washington  
Phoenix, AZ 85007

**III. YOU ARE COMMANDED to appear and give testimony concerning:**

See Attachment A.

1 In addition to Mr. Brandt, please produce the appropriate person(s) to address questions  
2 regarding the documents and information requests set forth in Attachment A.

3 DATE AND TIME OF APPEARANCE: October 6, 2016 at 10:00 a.m.


4 PLACE OF APPEARANCE: Arizona Corporation Commission  
5 Hearing Room #1  
6 1200 W. Washington  
7 Phoenix, AZ 85007

8 For your convenience, prior to the appearance date for production of documents and written responses  
9 requested in I. and II. above, you may turn in the subpoenaed documents and responses to  
10 Commissioner Burns' Office located at the above address. If you elect to do this, you need not  
11 appear personally at the appointed place and time on September 15, 2016. Personal appearance(s),  
12 however, are required on October 6, 2016 at 10:00 a.m. as directed in III.

13 YOU HAVE BEEN SUBPOENAED BY: Robert L. Burns, Commissioner  
14 Arizona Corporation Commission  
15 1200 W. Washington Phoenix, AZ 85007  
16 Telephone: 602-542-3682  
17 E-mail: [rburns@azcc.gov](mailto:rburns@azcc.gov)

18 DISOBEDIENCE OF THIS SUBPOENA constitutes contempt of the Arizona Corporation  
19 Commission and may subject you to further proceedings and penalties under law.

20 Issued this 25 day of August, 2016.

21   
22 Robert L. Burns, Commissioner  
23 Arizona Corporation Commission  
24  
25

26 Persons with a disability may request a reasonable accommodation such as a sign language interpreter,  
27 as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive  
28 Assistant to the Executive Director, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).  
Requests should be made as early as possible to allow time to arrange the accommodation.

# **ATTACHMENT A**

### **Documents**

- 1) Please provide the FERC Form 1 filed by APS for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.
- 2) Please provide the SEC 10K filed by Pinnacle West for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.
- 3) Please provide Pinnacle West's annual report to shareholders for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.
- 4) Please provide transcripts of Pinnacle West's quarterly earnings calls for 2011, 2012, 2013, 2014, 2015, and 2016.
- 5) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing Pinnacle West's use of APS's name or brand.
- 6) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing Pinnacle West's expenditures or donations of funds for any purpose under APS's name or brand.
- 7) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing the APS Foundation's expenditures or donations of funds for any purpose under APS's name or brand.
- 8) Please provide an organizational chart illustrating the officers, directors and managers for APS.
- 9) Please provide an organizational chart illustrating the officers, directors and managers for Pinnacle West.



**For 2011, please provide written responses to the following:**

- 1) For calendar year 2011, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2011, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2011, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2011, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations made by APS in 2011. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

**For 2012, please provide written responses to the following:**

- 1) For calendar year 2012, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2012, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2012, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2012, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations made by APS in 2012. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

**For 2013, please provide written responses to the following:**

- 1) For calendar year 2013, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2013, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2013, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2013, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2013. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

**For 2014, please provide written responses to the following:**

- 1) For calendar year 2014, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2014, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2014, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2014, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix

Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2014. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

**For 2015, please provide written responses to the following:**

1) For calendar year 2015, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

2) For calendar year 2015, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

3) For calendar year 2015, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.

4) For calendar year 2015, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2015. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

**For 2016, please provide written responses to the following:**

1) For year to date 2016, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

2) For year to date 2016, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

3) For year to date 2016, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.

- 4) For year to date 2016, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

**Affiliated Interests—Please provide written responses to the following:**


- 1) Please provide a list of all charitable donations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate to whom the donation was made, the amount of the donation, and what the donation was for. Please indicate which, if any, were made under APS's name or brand.
- 2) Please provide a list of all donations for political purposes made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate to whom the donation was made, the amount of the donation, and what the donation was for. Please indicate which, if any, were made under APS's name or brand.
- 3) Please provide a list of all expenditures to 501(c)(3) organizations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015 and 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for. Please indicate which, if any, were made under APS's name or brand.
- 4) Please provide a list of all expenditures to 501(c)(4) organizations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015 and 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for. Please indicate which, if any, were made under APS's name or brand.
- 5) Please list each marketing/advertising expenditure made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 6) Please describe any foundations or other entities (formed for charitable or other philanthropic purposes) that are related to APS and/or Pinnacle West. Please describe how these entities are funded. Please describe the arrangements governing the Foundation's use of APS's name or brand.
- 7) Please see the attached press releases from Pinnacle West, APS, and the APS Foundation (Attachment C). Please describe the relationships between these organizations. For example,

Alan Bunnell is listed as a media contact for all three organizations. Please indicate which entity he works for and which entity pays his salary.

# **ATTACHMENT B**

Arizona State Legislature

Bill Number Search:



Fifty-second Legislature - Second Regular Session

[Email a Member](#) | [Email Webmaster](#) [change session](#) | [printer friendly version](#)


<a href="#">Senate</a>	<a href="#">House</a>	<a href="#">Legislative Council</a>	<a href="#">JLBC</a>	<a href="#">More Agencies</a>	<a href="#">Bills</a>	<a href="#">Committees</a>	<a href="#">Calendars/News</a>
------------------------	-----------------------	-------------------------------------	----------------------	-------------------------------	-----------------------	----------------------------	--------------------------------

#### 4. Power to inspect and investigate

Section 4. The corporation commission, and the several members thereof, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public and of any public service corporation doing business within the state, and for the purpose of the commission, and of the several members thereof, shall have the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpoena, attachment, and punishment, which said power shall extend throughout the state. Said commission shall have power to take testimony under commission or deposition either within or without the state.

Arizona State Legislature

Bill Number Search:



Fifty-second Legislature - Second Regular Session

[Email a Member](#) | [Email Webmaster](#) [change session](#) | [printer friendly version](#)

<a href="#">Senate</a>	<a href="#">House</a>	<a href="#">Legislative Council</a>	<a href="#">JLBC</a>	<a href="#">More Agencies</a>	<a href="#">Bills</a>	<a href="#">Committees</a>	<a href="#">Calendars/News</a>
------------------------	-----------------------	-------------------------------------	----------------------	-------------------------------	-----------------------	----------------------------	--------------------------------

<a href="#">PREVIOUS DOCUMENT</a>	<a href="#">NEXT DOCUMENT</a>	<a href="#">PERIODIC DOCUMENT</a>
-----------------------------------	-------------------------------	-----------------------------------

**40-241. Power to examine records and personnel of public service corporations; filing record of examination**

A. The commission, each commissioner and person employed by the commission may, at any time, inspect the accounts, books, papers and documents of any public service corporation, and any of such persons who are authorized to administer oaths may examine under oath any officer, agent or employee of such corporation in relation to the business and affairs of the corporation.


B. Any person other than a commissioner or an officer of the commission demanding such inspection shall produce under the hand and seal of the commission his authority to make the inspection.

C. A written record of such testimony or statement given under oath shall be made and filed with the commission.



Arizona State Legislature

Bill Number Search:



Fifty-second Legislature - Second Regular Session

[Email a Member](#) | [Email Webmaster](#) [change session](#) | [printer friendly version](#)

<a href="#">Senate</a>	<a href="#">House</a>	<a href="#">Legislative Council</a>	<a href="#">JLBC</a>	<a href="#">More Agencies</a>	<a href="#">Bills</a>	<a href="#">Committees</a>	<a href="#">Calendars/News</a>
------------------------	-----------------------	-------------------------------------	----------------------	-------------------------------	-----------------------	----------------------------	--------------------------------

[HOME](#) [TITLE PAGE](#) [NEXT DOCUMENT](#) [PREVIOUS DOCUMENT](#)

**40-243. Conduct of hearings and investigations; representation by corporate officer or employee; arbitration**

A. All hearings and investigations before the commission or a commissioner shall be governed by this article, and by rules of practice and procedure adopted by the commission. Neither the commission nor a commissioner shall be bound by technical rules of evidence, and no informality in any proceeding or in the manner of taking testimony before the commission or a commissioner shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.


B. In a hearing or rehearing conducted pursuant to this article, a public service corporation may be represented by a corporate officer or employee who is not a member of the state bar if:

1. The corporation has specifically authorized the officer or employee to represent it.
2. The representation is not the officer's or employee's primary duty for the corporation but is secondary or incidental to such officer's or employee's duties relating to the management or operation of the corporation.

C. The commission may adopt or administer arbitration procedures to resolve complaints or disputes brought by a party against a telecommunications company, except that the commission shall not subject a wireless provider to arbitration unless the wireless provider and customer consent in writing. This section does not prohibit the commission from arbitrating disputes or complaints against a wireline service provider, involving telecommunications services contained in the bundle of services, to the extent the commission has jurisdiction as authorized pursuant to this chapter.

Arizona State Legislature

Bill Number Search:



Fifty-second Legislature - Second Regular Session

[Email a Member](#) | [Email Webmaster](#) [change session](#) | [printer friendly version](#)

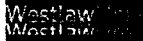
<a href="#">Senate</a>	<a href="#">House</a>	<a href="#">Legislative Council</a>	<a href="#">JLBC</a>	<a href="#">More Agencies</a>	<a href="#">Bills</a>	<a href="#">Committees</a>	<a href="#">Calendars/News</a>
------------------------	-----------------------	-------------------------------------	----------------------	-------------------------------	-----------------------	----------------------------	--------------------------------

[THIS TITLE PAGE](#) [NEXT DOCUMENT](#) [PREVIOUS DOCUMENT](#)

40-244. Administration of oaths and certification to official acts by commissioners; taking of depositions; witness fees and mileage

A. Each commissioner may administer oaths and certify to all official acts. The commission, or a commissioner, or any party, may take depositions as in a court of record.

B. Each witness who appears by order of the commission or a commissioner shall receive for his attendance the same fees allowed by law to a witness in civil actions, which shall be paid by the party at whose request the witness is subpoenaed. The fees of a witness subpoenaed by the commission shall be paid from the fund appropriated for the use of the commission as other expenses of the commission are paid. Any witness subpoenaed, except one subpoenaed by the commission, may, at the time of service, demand his mileage and one days attendance, and if not paid need not attend. A witness furnished free transportation shall not receive mileage.

**Arizona Court Rules**[Home Table of Contents](#)**Rule 45. Subpoena**

Arizona Revised Statutes Annotated

Rules of Civil Procedure for the Superior Courts of Arizona

Arizona Revised Statutes Annotated

Rules of Civil Procedure for the Superior Courts of Arizona (Refs &amp; Annos)

VI. Trials (Refs &amp; Annos)

16 A.R.S. Rules of Civil Procedure, Rule 45

**Rule 45. Subpoena**Currentness**(a) Form; Issuance.****(1) General Requirements.** Every subpoena shall:

- (A) state the name of the Arizona court from which it is issued;
- (B) state the title of the action, the name of the court in which it is pending, and its civil action number;
- (C) command each person to whom it is directed to do the following at a specified time and place:
  - (i) attend and give testimony at a hearing, trial, or deposition; or
  - (ii) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody or control; or
  - (iii) permit the inspection of premises; and
- (D) be substantially in the form set forth in Rule 84, Form 9.

(2) *Issuance by Clerk.* The clerk shall issue a signed but otherwise blank subpoena to a party requesting it, and that party shall complete the subpoena before service. The State Bar of Arizona may also issue signed subpoenas on behalf of the clerk through an online subpoena issuance service approved by the Supreme Court of Arizona.

**(b) For Attendance of Witnesses at Hearing, Trial or Deposition; Objections.**

(1) *Issuing Court.* A subpoena commanding a person to attend and give testimony at a hearing or trial shall issue from the superior court for the county in which the hearing or trial is to be held. Except as otherwise provided in Rule 45.1, a subpoena commanding a person to attend and give testimony at a deposition shall issue from the superior court for the county in which the case is pending.

(2) *Combining or Separating a Command to Produce or to Permit Inspection.* A command to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, may be joined with a command to attend and give testimony at a hearing, trial, or deposition, or may be set out in a separate subpoena.

**(3) Place of Appearance.**

(A) *Trial Subpoena.* Subject to Rule 45(e)(2)(B)(iii), a subpoena commanding a person to attend and give testimony at a trial may require the subpoenaed person to travel from anywhere within the state.

(B) *Hearing or Deposition Subpoena.* A subpoena commanding a person who is neither a party nor a party's officer to attend and give testimony at a hearing or deposition may not require the subpoenaed person to travel to a place other than:

- (i) the county in which the person resides or transacts business in person;
- (ii) the county in which the person is served with a subpoena, or within forty miles from the place of service; or
- (iii) such other convenient place fixed by a court order.

(4) *Command to Attend a Deposition—Notice of Recording Method.* A subpoena commanding a person to attend and give testimony at a deposition shall state the method for recording the testimony.

(5) *Objections; Appearance Required.* Objections to a subpoena commanding a person to attend and give testimony at a hearing, trial, or deposition shall be made by timely motion in accordance with Rule 45(e)(2). Unless excused from doing so by the party or

attorney serving a subpoena, by a court order, or by any other provision of this Rule, a person who is properly served with a subpoena is required to attend and give testimony at the date, time and place specified in the subpoena.

**(c) For Production of Documentary Evidence or for Inspection of Premises; Duties in Responding to Subpoena; Objections; Production to Other Parties.**

(1) *Issuing Court.* If separate from a subpoena commanding a person to attend and give testimony at a hearing, trial or deposition, a subpoena commanding a person to produce designated documents, electronically stored information or tangible things, or to permit the inspection of premises, shall issue from the superior court for the county in which the production or inspection is to be made.

(2) *Specifying the Form for Electronically Stored Information.* A subpoena may specify the form or forms in which electronically stored information is to be produced.

(3) *Appearance Not Required.* A person commanded to produce documents, electronically stored information or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless the subpoena commands the person to attend and give testimony at a hearing, trial or deposition.

(4) *Production of Documents.* A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

**(5) Objections.**

**(A) Form and Time for Objection.**

(i) A person commanded to produce documents, electronically stored information or tangible items, or to permit the inspection of premises, may serve upon the party or attorney serving the subpoena an objection to producing, inspecting, copying, testing or sampling any or all of the designated materials; to inspecting the premises; or to producing electronically stored information in the form or forms requested. The objection shall set forth the basis for the objection, and shall include the name, address, and telephone number of the person, or the person's attorney, serving the objection.

(ii) The objection shall be served upon the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(iii) An objection also may be made to that portion of a subpoena that commands the person to produce and permit inspection, copying, testing, or sampling if it is joined with a command to attend and give testimony at a hearing, trial or deposition, but making such an objection does not suspend or modify a person's obligation to attend and give testimony at the date, time and place specified in the subpoena.

**(B) Procedure After an Objection Is Made.**

(i) If an objection is made, the party or attorney serving the subpoena shall not be entitled to compliance with those portions of the subpoena that are subject to the objection, except pursuant to an order of the issuing court.

(ii) The party serving the subpoena may move for an order under Rule 37(a) to compel compliance with the subpoena. The motion shall comply with Rule 37(a)(2)(C), and shall be served on the subpoenaed person and all other parties in accordance with Rule 5(c).

(iii) Any order to compel entered by the court shall protect any person who is neither a party nor a party's officer from undue burden or expense resulting from the production, inspection, copying, testing, or sampling commanded.

**(C) Claiming Privilege or Protection.**

(i) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(ii) If a person contends that information that is subject to a claim of privilege or of protection as trial-preparation material has been inadvertently produced in response to a subpoena, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(6) *Production to Other Parties.* Unless otherwise stipulated by the parties or ordered by the court, documents, electronically stored information and tangible things that are obtained in response to a subpoena shall be made available to all other parties in accordance with Rule 26.1(a) and (b).

**(d) Service.**

(1) *General Requirements; Tendering Fees.* A subpoena may be served by any person who is not a party and is not less than eighteen years of age. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering to that person the fees for one day's attendance and the mileage allowed by law.

(2) *Exceptions to Tendering Fees.* When the subpoena commands the appearance of a party at a trial or hearing, or is issued on behalf of the state or any of its officers or agencies, fees and mileage need not be tendered.

(3) *Service on Other Parties.* A copy of every subpoena shall be served on every other party in accordance with Rule 5(c).

(4) *Service within the State.* A subpoena may be served anywhere within the state.

(5) *Proof of Service.* Proving service, when necessary, requires filing with the clerk of the court of the county in which the case is pending a statement showing the date and manner of service and of the names of the persons served. The statement must be certified by the person who served the subpoena.

**(e) Protection of Persons Subject to Subpoenas; Motion to Quash or Modify**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or an attorney responsible for the service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The issuing court shall enforce this duty and impose upon the party or attorney who breaches this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorneys' fee.

**(2) Quashing or Modifying a Subpoena.**

(A) *When Required.* On the timely filing of a motion to quash or modify a subpoena, the superior court of the county in which the case is pending or from which a subpoena was issued shall quash or modify the subpoena if:

(i) it fails to allow a reasonable time for compliance;

(ii) it commands a person who is neither a party nor a party's officer to travel to a location other than the places specified in Rule 45(b)(3)(B);

(iii) it requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) it subjects a person to undue burden.

(B) *When Permitted.* On the timely filing of a motion to quash or modify a subpoena, and to protect a person subject to or affected by a subpoena, the superior court of the county in which the case is pending or from which a subpoena was issued may quash or modify the subpoena if:

(i) it requires disclosing a trade secret or other confidential research, development, or commercial information;

(ii) it requires disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party;

(iii) it requires a person who is neither a party nor a party's officer to incur substantial travel expense; or

(iv) justice so requires.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(e)(2)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions, including any conditions and limitations set forth in Rule 26(c), as the court deems appropriate:

(i) if the party or attorney serving the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) if the person's travel expenses or the expenses resulting from the production are at issue, the party or attorney serving the subpoena assures that the subpoenaed person will be reasonably compensated.

(D) *Time for Motion.* A motion to quash or modify a subpoena must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(E) *Service of Motion.* Any motion to quash or modify a subpoena shall be served on the party or the attorney serving the subpoena in accordance with Rule 5(c). The party or attorney who served the subpoena shall serve a copy of any such motion on all other parties in accordance with Rule 5(c).

(f) *Contempt.* The issuing court may hold in contempt a person, who having been served, fails without adequate excuse to obey a subpoena. A failure to obey must be excused if the subpoena purports to require a person who is neither a party nor a party's officer to attend or produce at a location other than the places specified in Rule 45(b)(3)(B).

(g) *Failure to Produce Evidence.* If a person fails to produce a document, electronically stored information, or a tangible thing requested in a subpoena, secondary evidence of the item's content may be offered in evidence at trial.

**Credits**

Amended July 17, 1970, effective Nov. 1, 1970; July 6, 1983, effective Sept. 7, 1983; Sept. 15, 1987, effective Nov. 15, 1987; Oct. 9, 1996, effective Dec. 1, 1996; June 9, 2005, effective Dec. 1, 2005; Sept. 5, 2007, effective Jan. 1, 2008; Sept. 2, 2010, effective Jan. 1, 2011; Aug. 30, 2012, effective Jan. 1, 2013.

16 A. R. S. Rules Civ. Proc., Rule 45, AZ ST RCP Rule 45  
Current with amendments received through 07/01/16

END OF DOCUMENT

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

© 2016 Thomson Reuters

# **ATTACHMENT C**

## FOR IMMEDIATE RELEASE

Media Contact: Alan Bunnell, 602-250-3376  
Website: [aps.com/newsroom](http://aps.com/newsroom)

January 25, 2015

Page 1 of 2

**APS INVESTED MORE THAN \$10 MILLION IN ARIZONA NONPROFITS IN 2015**

PHOENIX – For more than 125 years, APS has understood that – as one of the only large corporations headquartered in the state – the company has a responsibility to not only provide reliable energy service to its 1.2 million customers, but to strengthen and empower the communities it serves. This belief is embedded in the culture of the company, and starts at the top.

APS announced today that its 2015 community investment in Arizona totaled more than \$10 million. This amount includes grants, sponsorships, and in-kind donations from APS and the APS Foundation to nonprofit organizations and educators throughout the state. In addition, APS employees donated more than 123,000 hours in volunteer time to Arizona nonprofits, an economic impact of \$2.8 million.

“Our long history in the state has shown us that the success of APS is closely tied to the prosperity and health of the communities we serve,” said Don Brandt, Chairman, President and CEO of APS. “We are committed to empowering nonprofits to do what they do best, and supporting education programs that will benefit our state’s future leaders for years to come. This commitment is ingrained in our culture, and radiates through all of our 6,400 employees.”

Among the nonprofits who received grants and contributions from APS and the APS Foundation in 2015:

- The Arizona Science Center received a grant for \$415,500 to support education programs throughout the state. The Science Center’s Rural Communities Education Program targets educators from rural school districts, bringing professional development opportunities to STEM teachers across the state. Additional support also was designated for new exhibits.
- The Arizona Hispanic Chamber of Commerce Foundation received a grant for \$250,000 for the Ed and Verma Pastor Legacy Scholarship Program. This scholarship will benefit Latino students majoring in a STEM or a public policy field at any public university or college in Arizona.
- MIND Research Institute received a \$200,000 grant to expand its ST Math program and to partner with ASU to implement a professional development exploratory study with English-language learner students. These programs will expand innovative teaching to low-income students throughout Arizona and will train teachers to use a visual approach that deepens students’ problem-solving and reasoning skills, helping them advance their mathematical knowledge.
- UMOM New Day Centers received a grant for \$150,000 to meet the needs of homeless women and families in Maricopa County. The funds will enable UMOM to provide comprehensive services, including housing, healthcare, vocational training and job placement, substance abuse counseling and housing service for residents while they focus on their case plan to end their homelessness.



- The Phoenix Symphony Association received \$225,000 from APS to deliver relevant and entertaining content to a broad range of constituencies and provide civic value through programs that benefit the needs of the community and foster a culture of creativity and innovation.
- The Navajo United Way received a grant for \$100,000 for its Operation Yellow Water Challenge Match. The Navajo United Way is working to ensure that farmers and communities impacted by the closure of the San Juan River, due to toxic waste contamination in August 2015, receive the support they need to irrigate fields and continue their livelihood.
- The Phoenix Art Museum received an \$85,000 grant to support exhibitions, education and The James K. Ballinger American Art and Education Fund.

In addition, in 2015 the APS Foundation supported programs that enhance academic achievement in the areas of Science, Technology, Engineering and Math (STEM):

- Arizona Science Teachers Association received a grant for \$86,000 for its Teacher Leadership Program.
- ASU Foundation for a New American University received a grant for \$80,000 for its STEMSS (Science, Technology, Engineering, Math and Social Studies) Summer Institute for K-12 teachers.
- Lowell Observatory received a \$56,500 grant for its Navajo-Hopi Astronomy Outreach Program.
- The Society of St. Vincent de Paul received a \$50,000 grant for its Dream Center Digital Library, which will introduce young students to the practical uses of technology through instruction in STEM subjects.
- The Southern Arizona Research Science and Engineering Foundation (SARSEF) received a \$50,000 grant to bring STEM education for students and teachers to 50 schools in low-income, rural areas.
- Teach for America Inc. received a grant of \$50,000 for its Math/Science initiative, which recruits highly qualified individuals to teach math and science in low-income schools and provides preparation and support to enhance teacher effectiveness.

#### **About APS Foundation**

Privately endowed by Pinnacle West Capital Corp. in 1981 as an independent 501(c)(3) organization, the APS Foundation distributes an average of \$1.5 to \$2.5 million per year through a bi-annual grant process. Since its inception, the Foundation has invested nearly \$35 million in Arizona nonprofits. For more information, please visit [aps.com/corporategiving](http://aps.com/corporategiving) and click on the Foundation link.

#### **About APS**

APS, Arizona's largest and longest-serving electricity utility, serves nearly 1.2 million customers in 11 of the state's 15 counties. With headquarters in Phoenix, APS is the principal subsidiary of Pinnacle West Capital Corp. (NYSE: PNW).



aps.com

**FOR IMMEDIATE RELEASE**

June 28, 2016

Page 1 of 2

Media Contacts: Jim McDonald (602) 250-3704  
Alan Bunnell (602) 250-3376  
Analyst Contact: Ted Geisler (602) 250-3200  
Website: [aps.com/newsroom](http://aps.com/newsroom)

**APS ANNOUNCES EXECUTIVE CHANGES AT PALO VERDE**  
*Edington transitioning to advisory role; Bement, Cadogan promoted*

PHOENIX – Arizona Public Service announced today changes in its senior leadership team at the Palo Verde Nuclear Generating Station. Bob Bement has been appointed Executive Vice President, Nuclear and will continue to report to Randy Edington, Executive Vice President and Chief Nuclear Officer. Jack Cadogan, currently Vice President, Nuclear Engineering, has been named to replace Bement as Senior Vice President, Site Operations. Maria Lacal will continue to serve as Senior Vice President, Regulatory and Oversight. Cadogan and Lacal will report to Bement.

On October 31, Bement will take over as Executive Vice President and Chief Nuclear Officer while Edington shifts to Executive Vice President and Advisor to the CEO.

"I want to thank Randy Edington for his great service to our customers, our company and our state over the past nine years," said Don Brandt, APS Chairman, President and Chief Executive Officer. "When Randy arrived, Palo Verde faced difficult regulatory and operational challenges. He put together a great team, which included Bob Bement, and more quickly than anyone thought possible, restored confidence and operational excellence at the plant. I am proud to say that under Randy's leadership, Palo Verde has become a model for other plants nationally and around the world as one of the best in the industry."

In 2015, Palo Verde generated a record 32.5 million megawatt-hours of carbon-free electricity, marking the 24<sup>th</sup> consecutive year the plant was the nation's largest power producer. Palo Verde remains the only U.S. generating facility to ever produce more than 30 million megawatt-hours in a year – an operational accomplishment the plant has achieved each of the past seven years and a total of 11 times. In addition, Palo Verde produces 80 percent of Arizona's clean electricity, displacing more than 13.2 million metric tons of greenhouse-gas emissions that would otherwise have been produced to power homes and businesses from Texas to California.

Bement has led the day-to-day nuclear operations at Palo Verde for the past nine years. Prior to joining APS shortly after Edington's arrival in 2007, he held senior nuclear leadership positions at Exelon and with Arkansas Nuclear One and began his nuclear career in the United States Navy as a nuclear-trained electrician.

"Bob Bement has served side-by-side with Randy at Palo Verde almost from Randy's first day at APS. Bob understands the plant culture and was essential in Palo Verde's return to excellence," said Brandt. "Randy and I have always agreed that the true measure of a leader is the organization's ability to excel after that leader is gone. In Bob, we have the ideal successor to continue Randy's outstanding work and to ensure Palo Verde's enduring industry leadership."

## APS ANNOUNCES EXECUTIVE CHANGES AT PALO VERDE

June 28, 2016

Page 2 of 2

Cadogan, who has served as Palo Verde's vice president of nuclear engineering since 2012, will assume Bement's former responsibilities overseeing site operations. Cadogan joined APS in 2009 as director of engineering support before being promoted to director of plant engineering in 2011. In his most recent role, he has been responsible for plant design and project engineering, as well as the nuclear fuels function. Prior to joining APS, Cadogan spent 30 years in the energy industry, holding numerous positions in power plant operations support, design and construction.

Palo Verde is operated by APS and jointly owned by APS, Salt River Project, El Paso Electric Co., Southern California Edison Co., Public Service Co. of New Mexico, Southern California Public Power Authority and the Los Angeles Department of Water & Power.

APS, Arizona's largest and longest-serving electric utility, serves nearly 1.2 million customers in 11 of the state's 15 counties. With headquarters in Phoenix, APS is the principal subsidiary of Pinnacle West Capital Corp. (NYSE: PNW).

# PINNACLE WEST | NEWS

CAPITAL CORPORATION

## FOR IMMEDIATE RELEASE

Media Contact: Alan Bunnell, (602) 250-3376  
Analyst Contact: Paul Mountain, (602) 250-4952  
Website: [pinnaclewest.com](http://pinnaclewest.com)

April 29, 2016

Page 1 of 4

### PINNACLE WEST REPORTS 2016 FIRST-QUARTER EARNINGS

- *Results in line with the company's expectations; full-year 2016 earnings guidance affirmed*
- *Major planned fossil power plant outages increase operations and maintenance expenses versus a year ago*
- *Retail sales continue to improve as Arizona's economy continues post-recession growth*

PHOENIX – Pinnacle West Capital Corp. (NYSE: PNW) today reported consolidated net income attributable to common shareholders of \$4.5 million, or \$0.04 per diluted share of common stock, for the quarter ended March 31, 2016. This result compares with \$16.1 million, or \$0.14 per diluted share, for the same period in 2015.

"Financial results were in line with our expectations, especially given the major fossil power plant overhauls and maintenance work that we had built into our budget," said Pinnacle West Chairman, President and Chief Executive Officer Don Brandt. "We remain optimistic that we will achieve our annual targets as customer and electricity sales growth continue to rebound, along with Arizona's improving economy."

Brandt cited a recent study by the U.S. Census Bureau that indicates the Phoenix-metropolitan area is the third-fastest growing of the top 15 metro areas in the U.S. A second report by Arizona's Office of Employment and Population Statistics shows the state has formally matched its pre-recession employment levels, amid expectations of continued solid growth in both population and jobs.

Looking to the immediate future, Brandt added that the company is focused on achieving constructive regulatory outcomes on a number of key energy policy issues, including Arizona's value and cost of distributed generation proceeding, as well as the company's upcoming rate case. "We will continue working with various stakeholders to achieve fair policies that benefit all our customers – and that help ensure a sustainable energy future for all of Arizona," he said.

The 2016 first-quarter results comparison was adversely impacted by increased operations and maintenance expenses, which decreased results by \$0.17 per share compared with the prior-year period. The expense increase was largely comprised of higher fossil plant maintenance costs as a result of more planned work being completed in the 2016 first quarter compared to the 2015 first quarter.

The above costs were partially offset by the following items:

- *The effects of weather variations* improved results by \$0.02 per share compared to the year-ago period despite temperatures that remained less favorable than normal. While residential heating degree-days (a measure of the effects of weather) were 57 percent higher than last year's first quarter, heating degree-days were still 18 percent below normal 10-year averages. A contributing factor was that February 2016 was the third-mildest February in the last 20 years and the fifth-mildest over the last 40 years.
- *Increased retail transmission revenue* positively impacted earnings by \$0.02 per share.
- *Higher retail electricity sales* – excluding the effects of weather variations, but including the effects of customer conservation, energy efficiency programs and distributed renewable generation – improved earnings \$0.01 per share. Compared to the same quarter a year ago, weather-normalized sales increased 1.3 percent (partly the result of an additional day of sales due to the leap year), while total customer growth improved 1.3 percent quarter-over-quarter.
- *The net effect of miscellaneous items* increased earnings \$0.02 per share.

#### Financial Outlook

For 2016, the Company continues to expect its on-going consolidated earnings will be within a range of \$3.90 to \$4.10 per diluted share, on a weather-normalized basis, and to achieve a consolidated earned return on average common equity of more than 9.5 percent.

Key factors and assumptions underlying the 2016 outlook can be found in the first-quarter 2016 earnings presentation slides on the Company's website at [pinnaclewest.com/investors](http://pinnaclewest.com/investors).

#### Conference Call and Webcast

Pinnacle West invites interested parties to listen to the live webcast of management's conference call to discuss the Company's 2016 first-quarter results, as well as recent developments, at 12 noon ET (9 a.m. AZ time) today, April 29. A replay of the webcast can be accessed at [pinnaclewest.com/presentations](http://pinnaclewest.com/presentations). To access the live conference call by telephone, dial (877) 407-8035 or (201) 689-8035 for international callers. A replay of the call also will be available until 11:59 p.m. (ET), Friday, May 6, 2016, by calling (877) 660-6853 in the U.S. and Canada or (201) 612-7415 internationally and entering conference ID number 13634257.

#### General Information

Pinnacle West Capital Corp., an energy holding company based in Phoenix, has consolidated assets of approximately \$15 billion, about 6,200 megawatts of generating capacity and 6,400 employees in Arizona and New Mexico. Through its principal subsidiary, Arizona Public Service, the Company provides retail electricity service to nearly 1.2 million Arizona homes and businesses. For more information about Pinnacle West, visit the Company's website at [pinnaclewest.com](http://pinnaclewest.com).

Dollar amounts in this news release are after income taxes. Earnings per share amounts are based on average diluted common shares outstanding. For more information on Pinnacle West's operating statistics and earnings, please visit [pinnaclewest.com/investors](http://pinnaclewest.com/investors).

### NON-GAAP FINANCIAL INFORMATION

In this press release, we refer to "on-going earnings." On-going earnings is a "non-GAAP financial measure," as defined in accordance with SEC rules. We believe on-going earnings provide investors with useful indicators of our results that are comparable among periods because they exclude the effects of unusual items that may occur on an irregular basis. Investors should note that these non-GAAP financial measures involve judgments by management, including whether an item is classified as an unusual item. We use on-going earnings, or similar concepts, to measure our performance internally in reports for management.

### FORWARD-LOOKING STATEMENTS

This press release contains forward-looking statements based on our current expectations, including statements regarding our earnings guidance and financial outlook and goals. These forward-looking statements are often identified by words such as "estimate," "predict," "may," "believe," "plan," "expect," "require," "intend," "assume" and similar words. Because actual results may differ materially from expectations, we caution readers not to place undue reliance on these statements. A number of factors could cause future results to differ materially from historical results, or from outcomes currently expected or sought by Pinnacle West or APS. These factors include, but are not limited to:

- our ability to manage capital expenditures and operations and maintenance costs while maintaining high reliability and customer service levels;
- variations in demand for electricity, including those due to weather, seasonality, the general economy, customer and sales growth (or decline), and the effects of energy conservation measures and distributed generation;
- power plant and transmission system performance and outages;
- competition in retail and wholesale power markets;
- regulatory and judicial decisions, developments and proceedings;
- new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant operations and potential deregulation of retail electric markets;
- fuel and water supply availability;
- our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investment;
- our ability to meet renewable energy and energy efficiency mandates and recover related costs;
- risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainty;
- current and future economic conditions in Arizona, including in real estate markets;
- the development of new technologies which may affect electric sales or delivery;
- the cost of debt and equity capital and the ability to access capital markets when required;
- environmental and other concerns surrounding coal-fired generation, including regulation of greenhouse gas emissions;
- volatile fuel and purchased power costs;

- the investment performance of the assets of our nuclear decommissioning trust, pension, and other postretirement benefit plans and the resulting impact on future funding requirements;
- the liquidity of wholesale power markets and the use of derivative contracts in our business;
- potential shortfalls in insurance coverage;
- new accounting requirements or new interpretations of existing requirements;
- generation, transmission and distribution facility and system conditions and operating costs;
- the ability to meet the anticipated future need for additional generation and associated transmission facilities in our region;
- the willingness or ability of our counterparties, power plant participants and power plant land owners to meet contractual or other obligations or extend the rights for continued power plant operations; and
- restrictions on dividends or other provisions in our credit agreements and Arizona Corporation Commission orders.

These and other factors are discussed in Risk Factors described in Part 1, Item 1A of the Pinnacle West/APS Annual Report on Form 10-K for the fiscal year ended December 31, 2015, and in Part II, Item 1A of the Pinnacle West/APS Quarterly Report on Form 10-Q for the quarter ended March 31, 2016, which readers should review carefully before placing any reliance on our financial statements or disclosures. Neither Pinnacle West nor APS assumes any obligation to update these statements, even if our internal estimates change, except as required by law.

# # #

# PINNACLE WEST | NEWS

CAPITAL CORPORATION

## FOR IMMEDIATE RELEASE

August 2, 2016

Page 1 of 4

Media Contact: Alan Bunnell (602) 250-3376  
Analyst Contacts: Ted Geisler (602) 250-3200  
Chalese Haraldsen (602) 250-5643  
Website: [pinnaclewest.com](http://pinnaclewest.com)

## PINNACLE WEST REPORTS 2016 SECOND-QUARTER RESULTS

- *Hotter-than-normal weather positively impacted quarterly results*
- *Residential sales and customer growth improved as Arizona's economy keeps expanding*
- *Investments in planned fossil power plant maintenance and higher benefit costs contributed to increased O&M expenses versus a year ago*
- *Full-year 2016 earnings guidance maintained*

PHOENIX – Pinnacle West Capital Corp. (NYSE: PNW) today reported consolidated net income attributable to common shareholders of \$121.3 million, or \$1.08 per diluted share of common stock, for the quarter ended June 30, 2016. This result compares with earnings of \$122.9 million, or \$1.10 per share, in the same 2015 period.

"Hotter-than-normal weather – led by the warmest June on record – positively impacted our earnings compared to the year-ago period," said Pinnacle West Chairman, President and Chief Executive Officer Don Brandt. "The favorable weather helped partially offset an increase in operations and maintenance expenses at a time when we are investing significant resources in planned fossil power plant overhauls and maintenance, as well as new customer information and outage management systems that will improve operational efficiencies, enhance reliability, and create a modernized energy system for all our customers."

In total, O&M expenses during the 2016 second quarter decreased results by \$0.19 per share compared with the prior-year-period. Quarter-over-quarter impacts primarily included the previously mentioned increase in planned fossil plant maintenance and higher employee benefit costs.

The favorable weather contributed \$0.09 per share to the company's bottom line compared to the year-ago period. Highlighted by record June heat, which helped offset a relatively mild April and May, the average high temperature in the 2016 second quarter was 94.5 degrees, while the average high temperature in the same period a year ago was 94.2 degrees. As a result, residential cooling degree-days (a measure of the effects of weather) were 4 percent higher than last year's second quarter, which was impacted by mild weather and one of the coolest Mays on record. Cooling degree-days also were more than 2 percent better than normal 10-year historical averages.



In addition to the effects of weather, the 2016 second-quarter results comparison was positively influenced by the following major factors:

- *Higher retail electricity sales* – excluding the effects of weather variations, but including the effects of customer conservation, energy efficiency programs and distributed renewable generation – improved results \$0.04 per share. Underlining an improving Arizona economy, total customer growth was 1.4 percent quarter-over-quarter, and mirrors recent census population data that indicates Phoenix is one of the five fastest-growing cities in the U.S.
- *Adjustment mechanisms* improved earnings by \$0.04 per share compared to the 2015 second quarter. These adjustors included an increase in transmission revenues; revenue from the Company's AZ Sun Program; and higher lost fixed cost recovery (LFCR) revenue.

#### **Financial Outlook**

For 2016, the Company continues to expect its on-going consolidated earnings will be within a range of \$3.90 to \$4.10 per diluted share, on a weather-normalized basis, and to achieve a consolidated earned return on average common equity of more than 9.5 percent.

Key factors and assumptions underlying the 2016 outlook can be found in the second-quarter 2016 earnings presentation slides on the Company's website at [pinnaclewest.com/investors](http://pinnaclewest.com/investors).

#### **Conference Call and Webcast**

Pinnacle West invites interested parties to listen to the live webcast of management's conference call to discuss the Company's 2016 second-quarter results, as well as recent developments, at 12 noon ET (9 a.m. AZ time) today, August 2. The webcast can be accessed at [pinnaclewest.com/presentations](http://pinnaclewest.com/presentations) and will be available for replay on the website for 30 days. To access the live conference call by telephone, dial (877) 407-8035 or (201) 689-8035 for international callers. A replay of the call also will be available until 11:59 p.m. (ET), Tuesday, August 9, 2016, by calling (877) 660-6853 in the U.S. and Canada or (201) 612-7415 internationally and entering conference ID number 13639544.

Pinnacle West Capital Corp., an energy holding company based in Phoenix, has consolidated assets of more than \$15 billion, about 6,200 megawatts of generating capacity and 6,400 employees in Arizona and New Mexico. Through its principal subsidiary, Arizona Public Service, the Company provides retail electricity service to nearly 1.2 million Arizona homes and businesses. For more information about Pinnacle West, visit the Company's website at [pinnaclewest.com](http://pinnaclewest.com).

Dollar amounts in this news release are after income taxes. Earnings per share amounts are based on average diluted common shares outstanding. For more information on Pinnacle West's operating statistics and earnings, please visit [pinnaclewest.com/investors](http://pinnaclewest.com/investors).

**NON-GAAP FINANCIAL INFORMATION**

In this press release, we refer to "on-going earnings." On-going earnings is a "non-GAAP financial measure," as defined in accordance with SEC rules. We believe on-going earnings provide investors with useful indicators of our results that are comparable among periods because they exclude the effects of unusual items that may occur on an irregular basis. Investors should note that these non-GAAP financial measures involve judgments by management, including whether an item is classified as an unusual item. We use on-going earnings, or similar concepts, to measure our performance internally in reports for management.

**FORWARD-LOOKING STATEMENTS**

This press release contains forward-looking statements based on our current expectations, including statements regarding our earnings guidance and financial outlook and goals. These forward-looking statements are often identified by words such as "estimate," "predict," "may," "believe," "plan," "expect," "require," "intend," "assume" and similar words. Because actual results may differ materially from expectations, we caution readers not to place undue reliance on these statements. A number of factors could cause future results to differ materially from historical results, or from outcomes currently expected or sought by Pinnacle West or APS. These factors include, but are not limited to:

- our ability to manage capital expenditures and operations and maintenance costs while maintaining high reliability and customer service levels;
- variations in demand for electricity, including those due to weather, seasonality, the general economy, customer and sales growth (or decline), and the effects of energy conservation measures and distributed generation;
- power plant and transmission system performance and outages;
- competition in retail and wholesale power markets;
- regulatory and judicial decisions, developments and proceedings;
- new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant operations and potential deregulation of retail electric markets;
- fuel and water supply availability;
- our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investment;
- our ability to meet renewable energy and energy efficiency mandates and recover related costs;
- risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainty;
- current and future economic conditions in Arizona, including in real estate markets;
- the development of new technologies which may affect electric sales or delivery;
- the cost of debt and equity capital and the ability to access capital markets when required;
- environmental and other concerns surrounding coal-fired generation, including regulation of greenhouse gas emissions;
- volatile fuel and purchased power costs;

- the investment performance of the assets of our nuclear decommissioning trust, pension, and other postretirement benefit plans and the resulting impact on future funding requirements;
- the liquidity of wholesale power markets and the use of derivative contracts in our business;
- potential shortfalls in insurance coverage;
- new accounting requirements or new interpretations of existing requirements;
- generation, transmission and distribution facility and system conditions and operating costs;
- the ability to meet the anticipated future need for additional generation and associated transmission facilities in our region;
- the willingness or ability of our counterparties, power plant participants and power plant land owners to meet contractual or other obligations or extend the rights for continued power plant operations; and
- restrictions on dividends or other provisions in our credit agreements and Arizona Corporation Commission orders.

These and other factors are discussed in Risk Factors described in Part 1, Item 1A of the Pinnacle West/APS Annual Report on Form 10-K for the fiscal year ended December 31, 2015, which readers should review carefully before placing any reliance on our financial statements or disclosures. Neither Pinnacle West nor APS assumes any obligation to update these statements, even if our internal estimates change, except as required by law.

# # #



**FOR IMMEDIATE RELEASE**

Media Contact: Alan Bunnell, 602-250-3376  
Website: [aps.com/newsroom](http://aps.com/newsroom)

February 3, 2016

Page 1 of 2

**APS FOUNDATION AWARDS OVER \$2.9 MILLION IN 2015 TO NONPROFITS  
WITH A FOCUS ON STEM EDUCATION IN ARIZONA**

PHOENIX – The APS Foundation is proud to be one of the leading supporters of science, technology, engineering and math (STEM) education in Arizona. Since 2012, the APS Foundation has focused its giving on STEM programs to benefit the state's students and teachers. In 2015, the Foundation distributed more than \$2.9 million to nonprofits across Arizona.

"APS is committed to supporting the outstanding organizations doing great work throughout Arizona, particularly in the area of STEM education," said Tina Marie Tentori, Executive Director of the APS Foundation. "Arizona jobs will increasingly depend on science, technology, engineering and math skills. These are the areas of study that drive today's global economy."

The first round of education grants was provided in June 2015 and totaled \$1.4 million to 17 organizations.

Nonprofits receiving grants from the APS Foundation for STEM-related programs in the Foundation's second round of grants for 2015 included:

- **Arizona Science Teachers Association** received a grant for \$86,000 for its Teacher Leadership Program, which provides access to professional development focused on research-based practices aimed at increasing student achievement, building and maintaining the leadership of Arizona science educators and providing resources and information for effective science education for students.
- **Valley of the Sun United Way** received an \$84,000 grant (the first of a three-year, \$250,000 commitment) for its Thriving Together program, a cross-sector collaboration working together to improve academic achievement in Arizona.
- **ASU Foundation for a New American University** received two grants totaling \$104,000. ASU Foundation received \$24,000 for its ExSciTEM (Exploring Science, Technology, Engineering and Math) program at ASU West and an \$80,000 grant for its STEMSS (Science, Technology, Engineering, Math and Social Studies) Summer Institute for K-12 teachers. This 10-day institute trains teachers how to integrate STEMSS across the curriculum through content lectures, hands-on activities, participation in science field studies and visits to local corporations showing STEM in practice.
- **Lowell Observatory** received a \$56,500 grant for its Navajo-Hopi Astronomy Outreach Program, now in its 10<sup>th</sup> year. The program pairs a professional astronomer from Lowell with fifth through eighth grade reservation teachers for one school year. Astronomers visit the partner classroom to lead science discussions and hands-on activities in collaboration with the local teacher. Students also take a field trip to Lowell.

- **The Society of St. Vincent de Paul** received a \$50,000 grant for its Dream Center Digital Library, which will introduce young students to the practical uses of technology in STEM subjects.
- **The Southern Arizona Research Science and Engineering Foundation** received a \$50,000 grant to bring STEM education to 50 schools in low-income rural areas.
- **Southwest Autism Research and Resource Center (SARRC)** received a \$50,000 grant to expand the number of teachers and clinicians educating Arizona's autism population and supporting the educators and districts working with them.
- **West-MEC Alliance** received a \$50,000 grant for the APS Discover What's Within Program, which will enrich West-MEC's Southwest Campus with STEM programming.
- **Science Foundation Arizona** received \$25,000 for its Navajo Code Writers STEM Initiative, a program that will introduce computer code writing curriculum to prepare Navajo students for the global economy.
- **Experience Matters Consortium Inc.** received a \$15,500 grant for its Volunteers in Preparing Students for Success program that provides education and STEM career guidance to low-income high school students.
- **Yavapai College Foundation** received \$8,200 for College for Kids, a summer educational program providing STEM classes for children aged 5-17.
- **Boys & Girls Club of Greater Scottsdale** received a grant for \$6,500 for its Da Vinci Disciples and Johnny 5 Alive STEM-based programs.
- **Treasures 4 Teachers** received a \$5,000 grant to STEM educational kits for hands-on classroom projects.

Videos showcasing STEM success stories resulting from APS Foundation STEM investment can be viewed at [aps.com/next](http://aps.com/next).

#### **About APS Foundation**

The APS Foundation is committed to making a deep impact in Arizona communities and does so through supporting statewide nonprofits that advance knowledge in the field of STEM (science, technology, engineering and math) education. The Foundation supports a wide range of educational initiatives that target both students and teachers in order to keep the next generation of Arizona's workforce strong and competitive.

Privately endowed by Pinnacle West Capital Corp. in 1981 as an independent 501(c)(3) organization, the APS Foundation distributes an average of \$1.5 million to \$2.5 million per year through a bi-annual grant process. Since its inception, it has invested nearly \$38 million in Arizona nonprofits. For more information, please visit [www.aps.com/corporategiving](http://www.aps.com/corporategiving) and click on the Foundation link.

# # #



**FOR IMMEDIATE RELEASE**

Media Contact: Alan Bunnell (602) 250-3376 or [alan.bunnell@aps.com](mailto:alan.bunnell@aps.com)  
Website: [aps.com/newsroom](http://aps.com/newsroom)

July 18, 2016

Page 1 of 2

**APS FOUNDATION CONTINUES FOCUS ON STEM EDUCATION**  
*More Than \$1.2 Million Awarded in First Round of 2016 Funding*

PHOENIX – Fourteen nonprofit organizations located throughout Arizona and the Four Corners area will receive more than \$1.2 million in STEM-supported grants, the APS Foundation announced today. Supporting science, technology, engineering and math (also known as STEM) and other education programs has been the Foundation's principal focus since 2012.

"Arizona is blessed to have a number of local organizations doing impactful work in STEM educational areas," said Tina Marie Tentori, executive director of the APS Foundation. "These grants will help move their efforts forward, including encouraging and preparing Arizona students to pursue future jobs in technology, clean energy and other STEM-related careers."

The following nonprofits received grants from the APS Foundation:

- **American Indian College Fund** received a \$100,000 grant for a scholarship fund that provides financial support to 15 Navajo college students pursuing majors in STEM or related fields at Navajo Nation-serving tribal colleges and mainstream universities in Arizona and New Mexico, with a particular emphasis around the Four Corners region.
- **Arizona Center for Afterschool Excellence** received \$5,000 for its annual conference dedicated to training 700 childcare providers throughout Arizona on integrating STEM activities into daily programming.
- **Arizona Science Center** received a \$385,000 grant to support the continuation of its Professional Learning and Development Rural Communities Expansion Project, which helps integrate STEM curriculum into rural school districts, including grades 3-8 in Cottonwood, Oak Creek, Humboldt, Winslow, Prescott, Sedona, Tonopah, Florence and Yuma.
- **Flagstaff Chamber of Commerce Foundation** received a \$20,000 grant for its Ready.Set.Code. Digital Initiative which introduces area youth and teachers to the various roles and potential careers that make up the digital workplace eco-system.
- **HandsOn Greater Phoenix** received a \$10,000 grant for its Your Experience Counts academic mentoring program that trains volunteers to work alongside elementary teachers in the classroom, helping with academic improvement in reading, writing, math and science.
- **Audubon Arizona** received a \$25,000 grant for its River Pathways program, which introduces urban youth to environmental science-related careers and gives students access to natural resource professionals.
- **NTC Research Foundation** received a \$108,000 grant for its BrainSTEM program, which brings 45-minute live performances by professional actor/educators to rural schools to introduce STEM principles to low income 5<sup>th</sup> through 8<sup>th</sup> graders. The program will reach 20,000 students, 700 teachers and 50 schools.

- **Teach for America** received a \$50,000 grant for a targeted STEM initiative that will sponsor 10 math and science teachers in Title I schools in the Phoenix metropolitan area.
- **Valley of the Sun YMCA** received a \$45,000 grant for its STEM Thursdays program, which provides fun, engaging, hands-on group STEM learning projects and encourages low income elementary school students in the Valley, Yuma, Somerton and Flagstaff to pursue STEM careers.
- **Arizona Chamber Foundation** received a \$100,000 grant for A for Arizona, an initiative to improve and serve K-12 low-income schools throughout Arizona.

Additional organizations receiving grants during this funding cycle include: **Arizona State Parks Foundation, Expect More Arizona, Grand Canyon Association and Great Hearts Academies.**

The next cycle of APS Foundation grant applications opens on July 15 with a deadline of Sept. 1, 2016. Applications and more information on grant eligibility can be found at [www.aps.com/corporategiving](http://www.aps.com/corporategiving) and clicking on the Foundation link.

#### **About APS Foundation**

The APS Foundation is committed to making a deep impact in Arizona communities and does so by supporting statewide nonprofits that advance knowledge in the field of STEM (science, technology, engineering and math) education. The Foundation supports a wide range of educational initiatives that target both students and teachers in order to keep the next generation of Arizona's workforce strong and competitive.

Privately endowed by Pinnacle West Capital Corp. in 1981 as an independent 501(c)(3) organization, the APS Foundation distributes an average of \$1.5 million to \$2.5 million per year through a bi-annual grant process. Since its inception, it has invested nearly \$38 million in Arizona nonprofits. For more information, please visit [www.aps.com/corporategiving](http://www.aps.com/corporategiving) and click on the Foundation link.

# # #

## CERTIFICATION OF SERVICE

On this 25 day of August, 2016, the foregoing document was filed with Docket Control as Correspondence from Commissioner Bob Burns and copies of the foregoing were mailed on behalf of the Commissioner to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link of the foregoing document to the following who have consented to email service.

Kurt Boehm  
BOEHM, KURTZ & LOWRY  
36 E. Seventh St. Suite 1510  
Cincinnati Ohio 45202

Nicholas J. Enoch  
LUBIN & ENOCH, PC  
349 N. Fourth Ave.  
Phoenix Arizona 85003

Richard Gayer  
526 W. Wilshire Dr.  
Phoenix Arizona 85003  
rgayer@cox.net  
**Consented to Service by Email**

Thomas A Loquvam  
PINNACLE WEST CAPITOL CORPORATION  
400 N. 5Th St, MS 8695  
Phoenix, Arizona 85004

Timothy M. Hogan  
ARIZONA CENTER FOR LAW IN THE PUBLIC  
INTEREST  
202 E. McDowell Rd. - 153  
Phoenix Arizona 85004  
thogan@aclpi.org  
ken.wilson@westernresources.org  
schlegelj@aol.com  
ezuckerman@swenergy.org  
bbaatz@aceee.org  
briana@votesolar.org  
**Consented to Service by Email**

Cynthia Zwick  
ARIZONA COMMUNITY ACTION ASSOCIATION  
2700 N. Third St. - 3040  
Phoenix Arizona 85004



Jay I. Moyes  
MOYES SELLERS & HENDRICKS, LTD  
1850 N. Central Ave. - 1100  
Phoenix Arizona 85004  
JasonMoyes@law-msh.com  
jimoyes@law-msh.com  
jim@harcuvar.com  
**Consented to Service by Email**

Michael Patten  
SNELL & WILMER, LLP  
One Arizona Center  
400 East Van Buren Street  
Phoenix Arizona 85004  
mpatten@swlaw.com  
jhoward@swlaw.com  
docket@swlaw.com  
BCarroll@tep.com  
**Consented to Service by Email**

Greg Patterson  
MUNGER CHADWICK  
916 W. Adams Suite 3  
Phoenix Arizona 85007

Janice Alward  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington  
Phoenix Arizona 85007

Daniel Pozefsky  
RUCO  
1110 West Washington, Suite 220  
Phoenix Arizona 85007

Thomas Broderick  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
Phoenix Arizona 85007

Dwight Nodes  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington  
Phoenix Arizona 85007-2927  
HearingDivision@azcc.gov  
**Consented to Service by Email**

Anthony Wanger  
IO DATA CENTERS, LLC  
615 N. 48th St  
Phoenix Arizona 85008

Giancarlo Estrada  
KAMPER ESTRADA, LLP  
3030 N. 3rd Street, Suite 770  
Phoenix Arizona 85012

Meghan H. Grabel  
OSBORN MALADON, PA  
2929 N. Central Avenue Suite 2100  
Phoenix Arizona 85012  
mgrabel@omlaw.com  
gyaquinto@arizonaic.org  
**Consented to Service by Email**

Scott S. Wakefield  
HIENTON & CURRY, PLLC  
5045 N 12th Street, Suite 110  
Phoenix Arizona 85014-3302  
swakefield@hclawgroup.com  
mlougee@hclawgroup.com  
Stephen.chriss@wal-mart.com  
Greg.tillman@walmart.com  
chris.hendrix@wal-mart.com  
**Consented to Service by Email**

Patrick J. Black  
FENNEMORE CRAIG, P.C.  
2394 E. Camelback Rd, Ste 600  
Phoenix Arizona 85016  
wcrocket@fclaw.com  
pblack@fclaw.com  
khiggins@energystat.com  
**Consented to Service by Email**

John William Moore, Jr.  
1321 North 16th Street  
Phoenix Arizona 85020

Tom Harris  
ARIZONA SOLAR ENERGY INDUSTRIES ASSOCIATION  
2122 W. Lone Cactus Dr. Suite 2  
Phoenix Arizona 85027  
Tom.Harris@AriSEIA.org  
**Consented to Service by Email**

Craig A. Marks  
CRAIG A. MARKS, PLC  
10645 N. Tatum Blvd.  
Suite 200-676  
Phoenix Arizona 85028  
Craig.Marks@azbar.org  
Pat.Quinn47474@gmail.com  
**Consented to Service by Email**

Court S. Rich  
ROSE LAW GROUP, PC  
7144 E. Stetson Drive, Suite 300  
Scottsdale Arizona 85251

Greg Eisert  
SUN CITY HOME OWNERS ASSOCIATION  
10401 W. Coggins Drive  
Sun City Arizona 85351  
gregeisert@gmail.com  
steven.puck@cox.net  
**Consented to Service by Email**

Albert E. Gervenack  
SUN CITY WEST PROPERTY OWNERS & RESIDENTS  
ASSOCIAT  
13815 Camino Del Sol  
Sun City Arizona 85372  
al.gervenack@porascw.org  
rob.robbins@porascw.org  
**Consented to Service by Email**

Patricia C. Ferre  
P.O. Box 433  
Payson Arizona 85547

Lawrence V. Robertson, Jr.  
PO Box 1448  
Tubac Arizona 85646  
Charles Wesselhoft  
Pima County Attorney's Office  
32 North Stone Avenue, Suite 2100  
Tucson Arizona 85701  
Charles.Wesselhoft@pcao.pima.gov  
**Consented to Service by Email**

Warren Woodward  
55 Ross Circle  
Sedona Arizona 86336  
w6345789@yahoo.com  
**Consented to Service by Email**

By:



Jessica Perry  
Executive Assistant to Commissioner Bob Burns

# **Exhibit No. B**

ORIGINAL



RECEIVED

September 8, 2015

DOCKET CONTROL

RE: Docket No. AU-00000A-15-0309

2015 SEP 8 PM 4 22

Dear [Responsible Party]:

By this letter, we hereby request that all public service corporations and unregulated entities that appear before the Commission agree to voluntarily refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates. We make this request because we believe that political contributions from such entities have damaged the public's perception of the Commission and have placed the Commission in a difficult position.

In the recent past, there have been repeated articles in the press concerning APS's alleged contributions to political campaigns. According to these sources, either APS or Pinnacle West, APS's parent company, allegedly contributed a significant amount of money to certain advocacy organizations, which in turn contributed money in support of or in opposition to a number of candidates. There have also been reports that other entities have also participated in campaign advocacy. When first reported, APS neither confirmed nor denied these claims. Later, however, Pinnacle West appears to have disclosed to its shareholders that it had made campaign contributions in an effort to defend APS against what it considered to be unfair attacks.

We acknowledge that public service corporations have a First Amendment right to support the candidates of their choice. We also recognize that this constitutional right carries with it the right to contribute to political campaigns. The laws governing campaign finance are not within the Commission's purview, and, at the present time, there do not appear to be assertions that Pinnacle West, APS or others have failed to comply with any applicable campaign finance laws. Unfortunately, this technical compliance has not adequately addressed the public's concerns. Especially concerning to us is the public's perception that the Commission, by its silence, has tacitly condoned this behavior.

At this time, we want to make it clear that we view it as unacceptable and inappropriate for public service corporations or others to make campaign contributions in support of or in opposition to any candidate for the Corporation Commission. This behavior has the strong potential to diminish the integrity of the Commission and to engender public doubt as to the Commission's ability to discharge its regulatory responsibilities in a fair and unbiased way. We therefore request that all entities that appear before the Commission—regulated and unregulated—voluntarily refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates.

We view these requests as a first step in addressing the unfortunate perceptions that have been caused by alleged campaign contributions discussed above. At a future time, we will consider whether and to what extent an audit of any public service corporation would be warranted and whether a request for financial information from unregulated entities would be within the Commission's scope of authority.

In closing, we want to make it clear that we believe in a necessary and appropriate degree of independence and separation between the Commission and the entities—both regulated and unregulated—that appear before it. We will continue to work to preserve that separation. Please respond to this request in writing within 45 days of the date of this letter via the Commission's docket or return mail.

Sincerely,

Susan Bitter Smith  
Chairman

Robert L. Burns  
Commissioner

Arizona Corporation Commission

DOCKETED

SEP 08 2015

DOCKETED BY

# **Exhibit No. C**

COMMISSIONERS  
SUSAN BITTER SMITH- Chairman  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

ORIGINAL



RECEIVED ARIZONA CORPORATION  
COMMISSION

2015 NOV 30 P 2:17

November 30, 2015

AZ CORP COMMISSION  
DOCKET CONTROL

RE: Docket No. AU-00000A-15-0309, In the Matter of a Generic Docket Regarding the Campaign Contribution Practices of Public Service Corporations and Other Entities that Appear Before the Commission

Dear Mr. Brandt:

In your recent letter, you state that it is both "unusual" and "unprecedented" for us to request information about APS's expenditures for political speech. I find these statements unwarranted, given the attention that these issues have generated over the past months. At the present time, the public appears to look upon the Commission with suspicion and mistrust because of your alleged campaign contributions. This current state of affairs is not in the Commission's best interests, nor is it in your best interests.

I recognize that both APS and Pinnacle West have a First Amendment right to participate in elections, and it is not my intention to interfere with the exercise of those rights. Intuitively, I understand that you have an interest in supporting candidates who may agree with your views. However, in my opinion, your support for any particular candidate should be open and transparent. Your unwillingness to disclose this information leads to a variety of unfortunate perceptions.

There has been discussion about the scope of the Commission's authority to require the disclosure of this information, especially as relates to Pinnacle West. While I contend that article XV, section 4 provides the Commission with the express authority to subpoena such information from both APS and Pinnacle West, I am—for the moment—content to focus my inquiry upon APS. Specifically, I would like to find out if APS has spent ratepayer money to support or oppose the election of Arizona Corporation Commission candidates. I would like to ensure that only APS's profits are being used for political speech.

Simply put, dollars that APS has received from ratepayers in order to recover the costs of providing utility service should not be used for political speech. Unfortunately, I have thus far seen no evidence that such funds are *not* being spent on political speech. Under the circumstances, transparency requires a full reporting of any campaign contributions expended by APS in the past election cycle. Therefore, I am asking APS to provide my office with a full report of all spending related in any way to the 2014 election cycle—including but not limited to direct contributions and indirect contributions to third-party organizations—within thirty days of the date of this letter. The report should be docketed and should include a description of the source of any such funds, *i.e.*, whether the funds originate from APS's profits or from money intended to cover APS's costs of providing service.

The Commission is APS's regulator, and as a duly elected commissioner, I look forward to APS's full compliance with my request.

Sincerely,

Robert L. Burns  
Commissioner

Arizona Corporation Commission

DOCKETED

NOV 30 2015

DOCKETED BY

# **Exhibit No. D**



# ORIGINAL

**COMMISSIONERS**  
SUSAN BITTER SMITH - Chairman  
BOB STUMP  
TOM FORESE  
DOUG LITTLE  
BOB BURNS



Arizona Corporation Commission

**ARIZONA CORPORATION COMMISSION**

Direct Line: (602) 542-3933  
Fax: (602) 542-5560  
E-mail: tforese@azcc.gov

**DOCKETED**

**RECEIVED**

SEP 04 2015

2015 SEP -4 P 4:19

September 4, 2015

DOCKETED BY	BAU
-------------	-----

ARIZONA CORP COMMISSION  
DOCKET CONTROL

Re: Docket No. AU-00000A-15-0309

Dear Commissioners and Interested Parties:

In response to Chairman Susan Bitter-Smith and Commissioner Bob Burns' letter docketed August 27, 2015, I summarize my concerns with requiring public service corporations to "refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates" and suggesting that the Commission will "consider whether and to what extent an audit of any public service corporation would be warranted" along with "request[s] for financial information."

Because of infrastructural challenges, public service corporations have been the only companies to provide service in specific areas, resulting in monopolies. The Arizona Constitution recognized the nature of the utility business and defined the scope of power the Arizona Corporation Commission would have over public service corporations as the power to assure "just and reasonable rates." This would provide a check in the absence of competition. Although this creates a powerful relationship between the two entities, we must understand the limits of this office and not buy into a false sense of omnipotence. Commissioners attempting to influence campaigns in their official capacity through this relationship would exceed the bounds of their constitutional mandate over public service corporations.

Adopting such a policy would also have severe implications to civil liberties. Public service corporations have a First Amendment right to support the candidates of their choice as a matter of free speech. Any attempt by this Commission to limit or restrain the rights of public service corporations to engage in political speech could well run afoul of the First Amendment of the U.S. Constitution pursuant to the Supreme Court's decisions in *Pacific Gas & Electric Co. v. Public Utilities Com.*, 475 U.S. 1, 14 (1986) ("Appellant does not, of course, have the right to be free from vigorous debate. But it does have the right to be free from government restrictions that abridge its own rights in order to 'enhance the relative voice' of its opponents.") and *Citizens United v. FEC*, 558 U.S. 310, 340 (2010) ("Speech restrictions based on the identity of the speaker are all too often simply a means to control content.").

Commissioners at the Corporation Commission took an oath to uphold the Constitution and should respect this right of autonomy and freedom of speech and debate. Upholding the foundational laws of the land should not be brushed aside or viewed as unfortunate and unsatisfactory technical compliance. The Constitution should be revered as the bedrock of our society, not a pebble in one's shoe. Any actions that we take to restrict or limit the ability of public service corporations to engage in speech, especially core political speech, are subject to immediate and likely successful attacks in federal court. Such an action would be costly for the State to defend, time consuming for the Commission, and would likely be unsuccessful given the U.S. Supreme Court's clear perspective on the question of the First Amendment's application to speech by corporate entities.

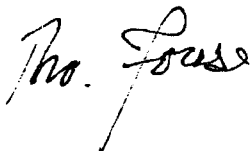
Further, *any* coordination between the source of an independent expenditure and the respective candidate is unlawful. A candidate impacted by an independent expenditure (whether it be beneficial or detrimental) should stay entirely away from any attempts to influence the expenditure regardless of their reasons. It is unquestioned that a sitting Commissioner is flatly prohibited from coordinating with those making independent expenditures to influence that Commissioner's election. Thus, directing those involved to do the inverse is equally as alarming.

In the spirit of transparency and defending public interest, the Commission may also want to consider the broader ramifications to the other interests and influences that come before it. Checks and Balances, a Florida based 501(c)(4) social welfare organization, advocates for rooftop solar through a combination of tactics supporting or opposing regulators and regulations around the country. Clearly, their interests extend beyond transparency and public interest. As the Commission considers supporting transparency, the public would also deserve to know the financial involvement of these actors as well. However, the Commission's authority would not extend to the communications of organizations who are not under the purview of the Commission. Opponents of the action would not be subject to similar disclosures because they are not public service corporations. This would leave the public with incomplete information as a result of a government mandate.

The Supreme Court has never permitted a campaign finance regulatory system that favors certain speakers over others and treats candidates for the same office differently. See *Davis v. FEC*, 554 U.S. 724 (2008) ("We have never upheld the constitutionality of a law that imposes different contribution limits for candidates who are competing against each other, and [] this scheme impermissibly burdens [Davis's] First Amendment right. "). If the State of Arizona chooses to enact a statutory scheme that requires greater public disclosure of issue advocacy activities it may endeavor to do so but such an action is wholly within the jurisdiction of the legislature (subject to limits imposed by the State and Federal Constitutions). The Commission's enabling legislation simply does not empower or authorize the Commission to take such an action.

This issue, a significant moment to change the course of governance for the better, ends paradoxically. If independent spending from company x is shown for regulator y in support of an action, the informed public will look to how the regulator votes and perhaps assume the independent spending culminated in said vote. The reality is that issues handled at the Commission have a level of complexity that allow for many potential outcomes in each individual case. This complexity requires one who means to uphold the duty of their office and to carefully study the issues in order to find solutions that make sense. This should only be done in the interest of the people of Arizona.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Forese".

Tom Forese  
Commissioner

# **Exhibit No. E**

**COMMISSIONERS**  
SUSAN BITTER SMITH – Chairman  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

DOUG LITTLE  
Commissioner



**ARIZONA CORPORATION COMMISSION**

RECEIVED

2015 SEP -8 A 9:30

September 8, 2015

Arizona Corporation Commission

DOCKETED

2 CORP COMMISSION  
DOCKET CONTROL

RE: Docket No. AU-00000A-15-0309

SEP 08 2015

DOCKETED BY

**ORIGINAL**

Dear Colleagues:

Based on the submission of a proposed Commission policy on candidate contributions by Commissioner Burns and Chairman Bitter Smith, I felt it important to make clear my views on that proposal by submitting this letter to the official docket.

The genesis of this conversation appears to be the frequent, unrelenting and unsupported allegations by the news media and other organizations that certain regulated entities inappropriately expended monies in the last election cycle using independent expenditure committees.

I'd like to begin my discussion of this matter by quoting the First Amendment to the United States Constitution. It states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The right to engage in free speech, with particular emphasis on political speech, and the right of free association<sup>1</sup> are two of this nation's most important founding principles. In the First Amendment, the framers recognized that freedom of speech not only serves to protect the rights of the individual, but also serves to protect our society as a whole. They also categorically rejected the notion that government gets to decide *who is allowed to speak and who is not*.

The Supreme Court has upheld this interpretation of the First Amendment many times. Justice Powell summarized these sentiments succinctly when he stated, "the inherent worth of speech in terms of its capacity for informing the public does not depend on the identity of its source, whether corporation, association, union or individual."<sup>2</sup> Justice Marshall's statement that, "Above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content"<sup>3</sup> is also highly relevant here. Any attempt to control who speaks or what is said runs counter to the First Amendment.

---

<sup>1</sup> The text of the First Amendment does not specifically mention the right to association. However, the United States Supreme Court held in NAACP v. Alabama that the freedom of association is an essential part of the freedom of speech because, in many cases, people can engage in effective speech only when they join with others.

<sup>2</sup> First National Bank of Boston v. Bellotti (1978)

<sup>3</sup> Police Department of City of Chicago v. Mosley (1972)

In the 2010 Citizens United case the Supreme Court addressed several issues relating to the First Amendment and political speech and found that restrictions on organizations' (including corporations) involvement in political advocacy are a clear violation of the First Amendment. The Court also recognized that organizations are associations of individuals and those individuals do not lose their right to free expression just because they choose to associate with other individuals. The Citizen's United decision affirms the freedom to discuss public issues and debate the qualifications of candidates during campaigns for public office. The Court clearly stated that the First Amendment protects political speech and by inference, spending money to engage in political speech.

I believe this is one of the core rights guaranteed by the First Amendment.

Moreover, political speech about candidates prior to an election is also a core Constitutional value. To attempt to prohibit people or organizations from spending money to engage in political speech is the same as prohibiting them from speaking.

In my personal view, more political speech, whether it comes from corporations, unions, associations, self-appointed "watch dog" groups or individuals is a good thing because the ability to engage in robust discussion about the qualifications of candidates in an election is a good thing.

It is also worth noting that corporations do not speak in one voice. In recalling my own recent campaign, there were many corporations, organizations and associations that held widely divergent views regarding who were the best qualified candidates for the office of Corporation Commissioner.

The Court also rejected the claim that independent expenditures by corporations or organizations cause corruption by their advocacy. In its decision the Court stated "The fact that speakers may have influence or access to elected officials does not mean those officials are corrupt." More importantly, "The fact that a corporation, or any other speaker is willing to spend money to try and persuade voters presupposes that the people have the ultimate influence over elected officials." (emphasis added) In other words, "The First Amendment confirms the freedom to think for ourselves."

Citizens United allows all corporations and organizations free speech, small or large, non-profit or for profit. They are free to present their views in the marketplace of free expression.

Some will argue that these competing messages serve to confuse the voter or attempt to unfairly influence the voters. In my view, we need to respect the voter's ability to discern the truth of the various arguments and filter out the misrepresentations, distortions and outright lies that may be presented.

I also find it ironic that many in our local media, including members of the Arizona Republic editorial board, are perfectly content to argue to deprive Arizona corporations of their First Amendment rights as well as deprive the voters of all available information on candidates. One would think that the press, one of the primary beneficiaries of the First Amendment, would be more vigorously defending the First Amendment rights of all others. That does not seem to be the case here.

The point that my two colleagues and the news media seem to be missing is this: political discourse in a constitutional republic like the United States can be raucous, messy and sometimes very contentious.

Elections provide an open forum for the discussion and examination of issues and debate on the qualifications of candidates for public office. Voters have the right to know about every piece of information

that might be relevant to their decision making process. And individuals, associations, unions and corporations have the right to inform the voters by independent issue or candidate advocacy.

In addition to these fundamental constitutional issues, there are real legal and practical issues with the proposed policy. The Arizona Corporation Commission simply does not have the legal jurisdiction to enforce the voluntary compliance sought in the proposal.

Given the breadth of organizations that would be effected by the proposed policy, the Commission would have no practical means of knowing whether compliance was universal. I believe the proposed policy would have the practical effect of silencing the political speech of some, while allowing full-throated dialogue by others.

As a result of carefully considering the arguments above, I have reached several conclusions:

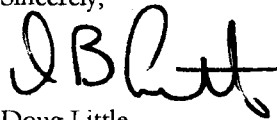
1. Campaign advocacy is fully permitted under the guarantees provided by the First Amendment and fully affirmed by the Supreme Court in the Citizens United case.
2. Any company, association, union or organization is entitled to engage in political speech, including independent advocacy for candidates and issues.
3. As written, the proposed policy would have the effect of violating the constitutional rights of any entity appearing before the Commission. This would include regulated entities, un-regulated entities, interveners, issue advocacy groups and virtually anyone else that would be a part of the regulatory process.
4. Any adoption of a policy by the Corporation Commission regarding campaign spending by any entity, whether they are regulated or not, is not a proper action by this Commission and if adopted would have a chilling effect on free speech by those entities and by direct implication would violate their First Amendment rights.
5. The proposed policy is legally and practically unenforceable.

It is for the reasons stated above that I cannot and will not support the proposal offered by Commissioner Burns and Chairman Bitter-Smith.

I believe that supporting such a proposal would be a violation of my oath of office in which I swore to protect and defend the Constitutions of the United States and of the State of Arizona.

Respectfully submitted this 8<sup>th</sup> day of September 2015.

Sincerely,



Doug Little  
Commissioner  
Arizona Corporation Commission

cc: See Service List

# **Exhibit No. F**

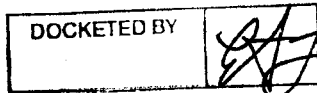
**COMMISSIONERS**  
SUSAN BITTER SMITH – Chairman  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE



**ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission  
**DOCKETED**

SEP 11 2015



September 11, 2015

RECEIVED

2015 SEP 11 P 3:40

AZ CORP COMMISSION  
DOCKET CONTROL

RE: Docket No. AU-00000A-15-0309

**ORIGINAL**

Dear Commissioners and Interested Parties:

In his statement at the Commission's September 8, 2015 Staff Meeting, Commissioner Burns expressed his desire to subpoena the financial records of Arizona Public Service to determine if they engaged in political spending in support of Corporation Commission candidates in the 2014 election.

It is not clear to me what purpose such a subpoena would serve.

There is nothing to indicate there was any violation of the law or Commission Rules. There is certainly nothing that would indicate such spending was included in rates. In fact, it would be impossible for any expenditure from that time frame to be included in rates because there has not been a rate case filed since that time.

Costs associated with political activities, including contributions to 501(c)(3)s are not recoverable in rates. During the course of a rate case an audit is performed that ensures (among other things) that no such expenditures are recovered through rates.

In my letter submitted to this docket on September 8, 2015, I explained why I believe the idea of a "voluntary" ban on campaign activities by entities that do business before the Commission is both unconstitutional and impractical. An attempt to subpoena such records will have similar constitutional and practical problems.

From a practical perspective, an examination of APS' activities during the campaign will not give us a complete picture. Many entities other than APS may have participated in the 2014 elections.

There are several entities that have substantial business interests in the decisions of this Commission that are not public service corporations and are not subject to the Commission's regulation.

To subpoena APS and leave all of these other entities unexamined would be inherently unfair and would lead to an incomplete picture of what actually was going on in the 2014 elections.



From a constitutional perspective, free speech and anonymous speech are intertwined. Anonymous speech has an important place in our political discourse. In fact, the Supreme Court has repeatedly ruled that the First Amendment protects the right to anonymous speech.

One of the most frequently quoted cases is *McIntyre v. Ohio Elections Commission* (1995). In that case, the decision, in relevant part reads: "Anonymity is a shield from the tyranny of the majority....It thus exemplifies the purpose behind the Bill of Rights and of the First Amendment in particular: to protect unpopular individuals from retaliation...at the hand of an intolerant society."

A second frequently referenced case is *Buckley v. Valeo* (1976) where the Court ruled that mandatory disclosure rules invariably chill the freedom of association and by implication, freedom of speech.

Under most state and federal laws, the identity of donors making contributions directly to a candidate must be reported. That is the case in Arizona. However, in 48 states, including Arizona, non-profits and other "independent expenditure committees" are not required to disclose their donors.

If Arizonans want to change that, the proper venue is in the Arizona Legislature, not the Arizona Corporation Commission.

I believe the subpoena contemplated by Commissioner Burns would put the Commission on very thin legal and constitutional ice. But the practical benefit of the subpoena would be minimal. Assuming the subpoena was not successfully challenged, it would only reveal information about one of many entities that potentially participated in the 2014 elections.

Rather than skate out onto the thin ice of campaign finance investigations with inherent First Amendment issues, I believe this Commission should stick to its core missions: regulating utility rates, regulating securities dealers, and enabling efficient registration of corporations.

Over the next few years almost every large utility in the state will be before us with rate cases and the multiple small utilities we regulate will continue to require our attention as well. Our attention should be there, not on pursuing a questionable subpoena that would have little practical value.

Sincerely,



Doug Little  
Commissioner  
Arizona Corporation Commission

Docketed September 11, 2015

Mailed September 11, 2016 to the Service List in Docket No. AU-00000A-15-0309

# **Exhibit No. G**

ORIGINAL  
PINNACLE WEST  
CAPITAL CORPORATION

RECEIVED

2015 OCT 23 P 4: 29

October 23, 2015

Chairman Susan Bitter Smith  
Commissioner Bob Burns  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

DONALD E. BRANDT  
Chairman, President and  
Chief Executive Officer

Mail Station 9042  
P.O. Box 53999  
Phoenix, AZ 85072

Arizona Corporation Commission

DOCKETED

OCT 23 2015

DOCKETED BY

*KE*

Re: September 8, 2015 Letter Concerning Campaign Contributions to ACC  
Candidates  
Docket No. AU-00000A-15-0309

Dear Chairman Bitter Smith and Commissioner Burns:

On behalf of Arizona Public Service Company ("APS") and Pinnacle West Capital Corporation (the "Companies"), I write in response to the September 8, 2015 letter filed by you in this docket. In that letter, you request that "all public service corporations and unregulated entities that appear before the Commission agree to voluntarily refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates." To say that this request is unusual, if not unprecedented in APS' 125-year history, only begins to highlight the critical nature of the issues it raises.

There is no disagreement that the First Amendment protects the right of individuals and corporations to engage in political speech through campaign expenditures. Indeed, the First Amendment "has its fullest and most urgent application" to speech uttered during a campaign for political office." *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 223 (1989). APS has always been a major participant in the public life of the State, by virtue of its responsibility to deliver an essential public service to many of its citizens. APS has for many years availed itself of all lawful means to make its views on issues important to its customers, employees and shareholders known to legislators, public officeholders and all those who have an interest in the future of Arizona. Accordingly, a request from governmental officials with great authority over APS to relinquish one means of expression of this right is a serious matter.

Chairman Susan Bitter Smith  
Commissioner Bob Burns  
October 23, 2015  
Page 2

The suggestion that political speech conducted in full compliance with law might threaten the Commission's integrity is troubling. Each Commissioner takes an oath to faithfully and impartially discharge the duties of his or her office. Each Commission decision is made in full public view, must be grounded in the record and must be based upon evidence. The Companies flatly reject any suggestion that Commissioners would base decisions affecting the well-being of the state's citizens other than on the evidence submitted to them, or would otherwise compromise his or her oath of office.

The concerns raised by your request extend beyond this particular Commission and implicate our broader political process. Much of the Commission's work involves legislative policy judgments, similar to work many elected and appointed commissions and public bodies do across the country. If the Companies, or other parties appearing before the Commission, seek to persuade voters to elect Commissioners who support certain policies instead of others, that choice to engage in a public political debate does not reflect on the integrity of commissioners. Nor does political speech reflect on the integrity of legislators in Arizona, or in any other state. This is simply how democracy works: consumers, businesses, and others with an interest in legislative decisions seek to inform voters and persuade them to support the candidates whose positions those speakers favor, and the voters decide which candidates to elect.

Under the Arizona Constitution, Corporation Commissioners are elected officials, accountable to the people of Arizona. Because Commissioners are elected through a democratic process, everyone, including the Companies, has a right to participate in that process.

Vigorous debate about whether and how our system of democracy works has gone on since the founding of our Republic. Throughout, one theme has consistently emerged: if there is a disagreement about who should be elected, or the nature of the First Amendment, or how our system works, "the remedy to be applied is more speech, not enforced silence." *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring). As the U.S. Supreme Court explained decades later, "The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it." *Citizens United v. Federal Election Commission*, 558 U.S. 310, 339 (2010).

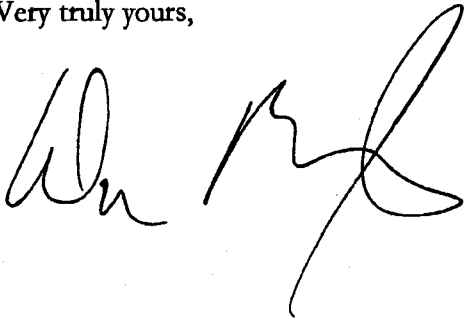
The request that the Companies refrain from exercising their First Amendment rights is particularly problematic because significant political expenditures will undoubtedly be

Chairman Susan Bitter Smith  
Commissioner Bob Burns  
October 23, 2015  
Page 3

made by others who lack the permanence and presence of APS before the Commission and in the state of Arizona. It is no secret that many entities have strong economic interests in Commission decisions. The Commission will not possess jurisdiction over all of these entities. In that circumstance, the Commission will be unable to audit, much less enforce, the promises or practices of such parties in their future campaign financing activities. When one party muzzles itself, while others remain free to speak, the public debate is less informed, more skewed, and ultimately harmful to the "uninhibited marketplace of ideas in which truth will ultimately prevail." *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014).

With respect, the Companies cannot agree to forfeit any of their First Amendment rights to speak on public issues. The Companies will continue to advocate for sound policies that enable a sustainable energy future for Arizona.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Bob Burns', written in a cursive style.

c: Commissioner Bob Stump  
Commissioner Doug Little  
Commissioner Tom Forese

# **Exhibit No. H**

ORIGINAL



0000168038

AU-00000A-15-0309

RECEIVED

2015 DEC 30 P 4: 48

AZ CORP COMMISSION  
DOCKET CONTROL

**DONALD E. BRANDT**  
Chairman, President and  
Chief Executive Officer

Mail Station 9042  
P.O. Box 53999  
Phoenix, AZ 85072

December 29, 2015

Commissioner Bob Burns  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Dear Commissioner Burns:

I write in response to your letter of November 30, 2015. In your letter, you note that dollars "received from ratepayers in order to recover the costs of providing utility service should not be used for political speech." APS agrees with that principle, and consistent with standard utility practice and Commission-established guidance, any political contribution made by a public service corporation should not be treated as an operating expense recoverable in rates.

If APS were to make a political contribution, these expenses would be paid for out of the money that the Commission has authorized as a return on shareholder capital—a return that must be offered so that investors are willing to invest money in Arizona's infrastructure.

You state in your letter "I would like to ensure that only APS's profits are being used for political speech." APS does not recover from customers the cost of any political contributions. Compelled disclosure about political contributions that APS or its affiliates may have made out of shareholder profits would go beyond what is required of all corporations under Arizona campaign finance law, and would impinge on APS's First Amendment rights.

I hope this answers your question.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Dan' followed by a large, looping flourish.

Arizona Corporation Commission  
**DOCKETED**

DEC 30 2015

DOCKETED BY A small rectangular stamp with the text 'DOCKETED BY' followed by a handwritten signature or set of initials.

# **Exhibit No. I**



ORIGINAL

COMMISSIONERS  
DOUG LITTLE- Interim Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
VACANT



ARIZONA CORPORATION COMMISSION

RECEIVED  
AZ CORP COMMISSION

Direct Line: (602) 542-3682  
Email: RBurns-web@azcc.gov

0000767644

2016 JAN 28 PM 2 49

January 28, 2016

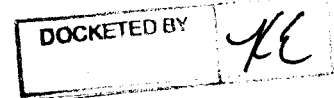
NOTICE OF INVESTIGATION

Arizona Corporation Commission  
**DOCKETED**

JAN 28 2016

RE: Docket No. AU-00000A-15-0309

Dear Mr. Brandt:



It is with regret that I now embark upon the next stage of my inquiry into APS's possible campaign contributions. Originally, I had hoped to address these concerns by focusing upon APS's future behavior, and to that end, I asked APS last year to voluntarily agree to refrain from making political contributions concerning the Corporation Commission in the upcoming election cycle. You rejected that proposal.

I next asked you to provide a report listing any campaign contributions provided by APS in 2014. You declined to provide this information, claiming that such disclosure would "impinge on APS's First Amendment rights." As I have previously stated, I recognize that both APS and Pinnacle West have a First Amendment right to make campaign contributions, and it is not my intention to interfere with the exercise of those rights. It is my position, however, that disclosure requirements do not offend the First Amendment when the information sought is related to the Commission's constitutional and statutory regulatory authority.

In the current climate, there is a public perception that APS has used funds earmarked for its costs of service to support various political campaigns. Recently, I have become concerned about the lack of transparency for all of APS's below-the-line expenditures. In sum, I intend to initiate an investigation pursuant to my authority under A.R.S. § 40-241 to determine whether APS has used above-the-line funds for political, charitable, or other donations. Although my inquiries were initially focused on potential campaign contributions, I now intend to broaden my inquiry to include funds expended on all political contributions, lobbying, and charitable contributions, *i.e.*, all donations made—either directly or indirectly—by APS or under APS's brand name for any purpose.

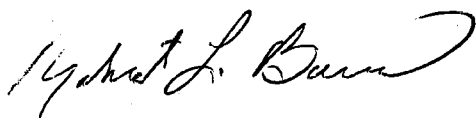
APS's 2014 FERC Form 1, page 117, reports "donations" (Account No. 426.1) in the amount of \$1,998,442 and "expenses for civic, political & related activities" (Account No. 426.4) in the amount of \$2,883,694. I am interested in examining APS's books and records to determine the specific expenditures that make up these amounts. In addition, I am under the impression that APS's affiliates sometimes make donations using affiliate funds, but under APS's brand name. I would like to examine the full parameters of this arrangement, including a full accounting of all contributions/donations given by APS's affiliates under APS's brand name.

Finally, I am aware that APS and its affiliates, especially Pinnacle West, share commonalities in terms of officers and directors, as well as other personnel. I would like to investigate the degree to which APS and Pinnacle West are intertwined in terms of organization, operation, and structure.

Pursuant to my authority under A.R.S. § 40-241, I hereby expressly direct APS to make its accounts, books, papers, and documents available for inspection. Also pursuant to A.R.S. § 40-241, APS is directed to make available the appropriate person(s) to answer questions about their books, records, and business affairs. I will designate a representative to perform the inspection and the interviews, and pursuant to A.R.S. § 40-241, I intend for those examinations to be conducted under oath so that a written record may be publicly filed pursuant to A.R.S. § 40-241.C.

My office will be in contact with you soon in order to schedule a mutually convenient series of dates for the conduct of this investigation. To be clear, unlike my previous communications, this letter is not intended as a request, but is instead a *requirement* for your cooperation under A.R.S. § 40-241. I look forward to your full compliance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert L. Burns".

Robert L. Burns  
Commissioner

# **Exhibit No. J**

1 BEFORE THE ARIZONA CORPORATION COMMISSION  
2  
3 IN THE MATTER OF THE APPLICATION OF ) DOCKET NO.  
4 ARIZONA PUBLIC SERVICE COMPANY FOR ) E-01345A-11-0224  
5 APPROVAL OF LOST FIXED COST RECOVERY )  
6 MECHANISM. )  
7  
8 ) OPEN MEETING

9 At: Phoenix, Arizona  
10 Date: April 12, 2016  
11 Filed: April 13, 2016  
12  
13

14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 AGENDA ITEM NO. 27  
16  
17  
18  
19

20 COASH & COASH, INC.  
21 Court Reporting, Video & Videoconferencing  
22 1802 N. 7th Street, Phoenix, AZ 85006  
23 602-258-1440 staff@coashandcoash.com

24 By: Colette E. Ross, CR  
25 Certified Reporter  
Certificate No. 50658

Coash & Coash, Inc.

1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on to be heard at Open Meeting as  
3 Agenda Item No. 27 before of the Arizona Corporation  
4 Commission, in Hearing Room 1 of said Commission, 1200  
5 West Washington Street, Phoenix, Arizona, commencing at  
6 12:22 p.m. on the 12th of April, 2016.  
7  
8

BEFORE: DOUG LITTLE, Chairman  
9 BOB BURNS, Commissioner  
TOM FORESE, Commissioner  
10 ANDY TOBIN, Commissioner, via teleconference  
11

12 APPEARANCES:  
13

For the Applicant:

14 Mr. Tom Mumaw  
15

16 For the Arizona Corporation Commission:

17 Mr. Thomas Broderick  
Mr. Rick Lloyd  
18 Ms. Janice Alward  
19  
20  
21  
22  
23  
24  
25

1 CHMN. LITTLE: All right. Item No. 27, Arizona  
2 Public Service Company, E-01345A-11-0224, the  
3 application for approval of an annual lost fixed cost  
4 recovery mechanism adjustment.

5 MR. BRODERICK: Rick Lloyd on behalf of Staff.

6 MR. LLOYD: Good morning, Chairman Little and  
7 Commissioners.

8 Agenda 27 is an application by Arizona Public  
9 Service Company for approval of its annual reset of its  
10 lost fixed cost adjuster. APS is requesting that the  
11 LFCR charge be reset from 1.4592 percent to  
12 1.7095 percent of the customer's bill, which would  
13 result in an increase of 34 cents per month for a  
14 residential customer using the annual average of 1100  
15 kilowatt hours per month. The impact on retail revenues  
16 from the new LFCR charge is an overall estimated revenue  
17 recovery of approximately \$46.4 million for the 12-month  
18 collection period.

19 Staff has reviewed the application and believes  
20 the LFCR calculation has been completed in compliance  
21 with the LFCR plan of administration. Accordingly,  
22 Staff is recommending approval of this application.

23 Staff is proposing an amendment to correct two  
24 minor errors. And I also note that the company would  
25 like to sponsor an amendment, a minor amendment, as to

**Coash & Coash, Inc.**

1 when the collection period would start.

2 I would be happy to answer any questions you may  
3 have regarding this.

4 CHMN. LITTLE: So does the company have a  
5 proposed amendment, or maybe not? I will address that  
6 question to Mr. Mumaw.

7 Mr. Mumaw, how are you today?

8 MR. MUMAW: Just fine. Tom Mumaw on behalf of  
9 Arizona Public Service Company.

10 Our amendment would be on page 6 of the  
11 recommended order, line 3. And we would like to  
12 substitute the word first for the word next, and then  
13 substitute May for April. We would much prefer to begin  
14 this charge on the first billing cycle of the month if  
15 for no other reason that way everybody pays the same  
16 amount of LFCR payments rather than some customers  
17 paying 12 payments in the month -- in the year, excuse  
18 me, and other customers paying only 11 payments in the  
19 month.

20 CHMN. LITTLE: Okay. So give me that one more  
21 time so I can write it down.

22 MR. MUMAW: Yes. Line 3, page 6, substitute the  
23 word first for next, and so say first available billing  
24 cycle of, and then May rather than April. And while I  
25 am here, we also support the Staff amendment as well.

Coash & Coash, Inc.

1 CHMN. LITTLE: Mr. Broderick, does Staff have  
2 any issue with the proposed amendment from the company?

3 MR. LLOYD: We do not.

4 CHMN. LITTLE: Okay.

5 COM. FORESE: Mr. Chairman.

6 CHMN. LITTLE: Commissioner Tobin, please.

7 COM. TOBIN: Mr. Chairman, in the interest of  
8 transparency, pursuant to A.R.S. 38-509, I filed in  
9 Docket No. AU-00000D-16-0120 a disclosure of possible  
10 substantial interest found in Arizona Revised Statute  
11 38-502 for the following matter, E-01345A-11-0224,  
12 Arizona Public Service's application for approval of its  
13 annual lost fixed cost recovery mechanism.

14 Mr. Chairman, I may have a conflict of interest  
15 due to my son-in-law being employed by SolarCity, who is  
16 participating in this docket. While I, along with many  
17 lawyers, disagree with the Special Counsel's  
18 interpretation of 38-501, I will refrain from  
19 participating in any manner in this docket.

20 I think the general public would agree with me  
21 that I do not have a substantial interest in this item.  
22 But in the interest of transparency, I would like to  
23 file that with the Commission.

24 CHMN. LITTLE: Thank you, Commissioner Tobin.

25 Shay, please note that Commissioner Tobin will

Coash & Coash, Inc.



1 be recusing himself from the vote.

2 Commissioner Burns, would you like to move the  
3 amendment, excuse me, move the item so we can amend it?

4 COM. BURNS: Mr. Chairman, I move Item 27 be  
5 adopted.

6 CHMN. LITTLE: Okay. And I will go ahead and  
7 pick this up as Little Proposed Amendment No. 1.  
8 Page 6, line 3, substitute the word first for next and  
9 substitute the word May for April, and make any  
10 conforming changes.

11 So I will propose that Little Amendment No. 1 as  
12 I just read it.

13 Mr. Mumaw, does that accomplish what you are  
14 looking for?

15 MR. MUMAW: Yes, it does. I think it is fairer  
16 and it makes -- it is simpler for everyone.

17 CHMN. LITTLE: Okay. Very good.

18 Commissioner Burns, would you please move the  
19 amendment.

20 COM. BURNS: I move the amendment.

21 CHMN. LITTLE: Sorry. I took care of that,  
22 didn't I.

23 So could we have a vote on the amendment. All  
24 in favor of the amendment, signify by saying aye.

25 (A chorus of ayes.)

1 CHMN. LITTLE: So three votes in favor, one  
2 recusal, one not present, the amendment passes.  
3 Commissioner Burns, would you please move the  
4 item as amended.  
5 COM. BURNS: Mr. Chairman, I move Item 27 as  
6 amended to be adopted.  
7 CHMN. LITTLE: Thank you.  
8 Shay, would you please call the roll.  
9 MR. MUMAW: Excuse me. Mr. Chairman, do you  
10 need to vote on the Staff amendment?  
11 CHMN. LITTLE: Oh, yes, I am sorry, we do. I am  
12 being remiss.  
13 MR. MUMAW: I didn't want to interject myself.  
14 CHMN. LITTLE: I am glad you did. I am having  
15 some challenges today.  
16 Commissioner Burns, would you please move  
17 Item -- excuse me, Staff Proposed Amendment No. 1.  
18 COM. BURNS: Yes, Mr. Chairman, I move Staff  
19 Proposed Amendment No. 1 be adopted.  
20 CHMN. LITTLE: All in favor signify by saying  
21 aye.  
22 (A chorus of ayes.)  
23 CHMN. LITTLE: Three votes in favor, Staff  
24 Amendment No. 1 passes.  
25 Now, Commissioner Burns, would you please move

1 Item No. 27 as amended.

2 COM. BURNS: Mr. Chairman, I move Item 27 as  
3 amended be adopted.

4 CHMN. LITTLE: Shay, please call the roll.

5 SECRETARY BERNAL: Commissioner Burns.

6 COM. BURNS: Yes, I would like to explain my  
7 vote. And I hope you will bear with me here. It is  
8 going to take me a little while to explain, explain this  
9 vote.

10 In the oath of office, we talk about the  
11 Constitution and the laws of the State of Arizona. But  
12 we also said in our oath that we will faithfully and  
13 impartially discharge the duties of the office of  
14 Corporation Commission Commissioner according to the  
15 best of my ability. And I am attempting to do that.  
16 And I believe that a vote is a tool in a -- in that  
17 process.

18 So the issue that is troubling me is relative to  
19 constitutional authority and statutory authority. And  
20 so I would like to read a couple of items, one from the  
21 Constitution and one from statute.

22 In the Constitution, Article 15, Section 4 says:

23 The power to inspect and investigate.

24 Section 4, the Corporation Commission, and the several  
25 members thereof, shall have power to inspect and

1 investigate the property, books, papers, business,  
2 methods and affairs of any corporation whose stock shall  
3 be offered for sale to the public and of any public  
4 service corporation doing business within the state, and  
5 for the purpose of the Commission, and of the several  
6 members thereof, shall have the power of a court of  
7 general jurisdiction to enforce the attendance of  
8 witnesses and the production of evidence by subpoena,  
9 attachment, and punishment, which said power shall  
10 extend throughout the state. Said Commission shall have  
11 power to take testimony under commission or deposition  
12 either within or without the state.

13 In Section 40, paragraph 241 of the Arizona  
14 statutes, power to examine records and personnel of  
15 public service corporations, filing record of  
16 examination:

17 A, the Commission, each Commissioner and person  
18 employed by the Commission may at any time inspect the  
19 accounts, books, papers, and documents of any public  
20 service corporation, and any such persons who are  
21 authorized to administer oaths may examine under oath  
22 any officer, agent, or employee of such corporation in  
23 relation to the business and affairs of the corporation;

24 B, any person other than a Commissioner or an  
25 officer of the Commission demanding such inspection

Coash & Coash, Inc.

1 shall produce under the hand and seal of the Commission  
2 his authority to make the inspection;

3 C, a written record of such testimony or  
4 statement given under oath shall be filed with the  
5 Commission.

6 There was a Supreme Court order that contains a  
7 paragraph that I would also like to read:

8 The Court stated the Corporation Commission was  
9 not designed to protect public service corporations and  
10 their management but, rather, was established to protect  
11 our citizens from the results of speculation,  
12 mismanagement and abuse of power. To accomplish these  
13 objectives, the Commission must have the power to obtain  
14 information about and take action to prevent unwise  
15 management or even mismanagement and to forestall its  
16 consequences in intercompany transactions significantly  
17 affecting a public service corporation's structure or  
18 capitalization.

19 There is a Commission order that has been issued  
20 to APS. APS has indicated that they may resist  
21 compliance with that order. I am interested in  
22 expediting this particular process.

23 If a judge in this state received a refusal or a  
24 resistance to comply, I believe the recipient of that  
25 order by a judge, a judge in one of the courts in the

Coash & Coash, Inc.

1 state, I believe the recipient of that order would be  
2 found in contempt of court. In this case, I believe APS  
3 will be, without a timely response to this Commission's  
4 order, in contempt of the Commission. If a contempt of  
5 the court, one of the state courts, if there were  
6 contempt in the court, all of the judges of that court  
7 would, I believe, demand immediate compliance.

8 This Commission has the same level of  
9 responsibility to the citizens of Arizona. And a  
10 failure to respond to a Commission order would be, in my  
11 mind, contempt of the Commission and should be met with  
12 the same level of demand by the members of this  
13 Commission.

14 APS has been granted monopoly status which  
15 carries with it tremendous advantages. With those  
16 advantages --

17 MS. ALWARD: Chairman.

18 COM. BURNS: -- comes a much higher level of  
19 transparency and public reporting than is required by  
20 the free competitive market --

21 MS. ALWARD: Chairman.

22 CHMN. LITTLE: Ms. Alward.

23 MS. ALWARD: I hate to interrupt Commissioner  
24 Burns. But it seems to me that if Mr. Commissioner  
25 Burns's comment is related to this item, then it should

**Coash & Coash, Inc.**

1 be made clear. Otherwise, we are off the agenda, from  
2 my view. I think that every Commissioner, of course,  
3 can comment, but it needs to be related to this item.  
4 And if Commissioner Burns would like to comment on Item  
5 27 in light of his earlier statements, that's fine. But  
6 I think we are going off agenda under the open meeting  
7 law.

8 COM. BURNS: Well, Mr. Chairman, I believe that  
9 I have the opportunity or the right to explain my vote.  
10 And my vote is a tool of this Commission. All votes of  
11 this Commission are a tool to be used. And I intend to  
12 try and use that vote as a tool. And I am explaining so  
13 that you will understand what I am trying to get to when  
14 I do make my vote.

15 So I would like to be able to continue. I am  
16 close to the end of my explanation.

17 CHMN. LITTLE: Commissioner Burns, please  
18 continue.

19 And, Ms. Alward, your concern is noted.

20 COM. BURNS: As I stated, APS has been granted  
21 monopoly status, which carries with it tremendous  
22 advantages. With those advantages comes a much higher  
23 level of transparency and public reporting than is  
24 required by the free competitive market counterparts.

25 I am voting no on this item and will not support

1 any further action items requested by APS with the  
2 exception of an item that might have health or safety  
3 components until the Commission order that rests at the  
4 APS corporate office is complied with in its entirety.

5 Furthermore, Mr. Chairman, I believe that you,  
6 in your position as Chairman of this Commission, have  
7 the authority to take that same type of position and  
8 expedite an action that has been ordered by this  
9 Commission.

10 And, again, with that, I vote no.

11 SECRETARY BERNAL: Commissioner Tobin, recused.

12 Commissioner Stump, excused.

13 Commissioner Forese.

14 COM. FORESE: Aye.

15 SECRETARY BERNAL: Chairman little.

16 CHMN. LITTLE: I am going to vote aye. But I  
17 would also like to explain my vote.

18 I certainly understand and appreciate what  
19 Commissioner Burns has just said. And in my considered  
20 opinion, while he is correct that he has issued a demand  
21 letter for information to APS, the ultimate question of  
22 whether or not that letter is actually within his  
23 authority is still, to my mind, up in the air.

24 I would simply direct anyone to the campaign  
25 finances Docket No. last four digits, or, excuse me, the

Coash & Coash, Inc.



1 last six digits are 15-0309, in which Commissioner Burns  
2 has requested an advisory opinion from the Attorney  
3 General, which has been to this point not forthcoming,  
4 and my response to his letter to the Attorney General  
5 outlining the concerns that I have.

6 I think certainly Commissioner Burns is entitled  
7 to vote his conscience and is entitled to his particular  
8 point of view on this. I personally disagree with that  
9 point of view.

10 And since we do not have a majority, we cannot  
11 move this item forward in this meeting. What we will  
12 have to do is take this item under advisement in a  
13 future open meeting, if I am not incorrect.

14 Is that correct, Ms. Alward?

15 MS. ALWARD: That's correct, Mr. Chairman. By  
16 the fact the item hasn't passed, it has not been denied,  
17 it just hasn't passed. So the way the Commission  
18 typically handles this, it brings it back again for  
19 another opportunity for consideration.

20 CHMN. LITTLE: So I will look at docketing this  
21 item at a future open meeting. And certainly we will  
22 let the parties know when that item is docketed.

23 Any other observations at this point,  
24 Commissioner Forese, Commissioner Tobin, Commissioner  
25 Burns?

1 COM. BURNS: No.  
2 CHMN. LITTLE: Give everybody one last shot at  
3 it.  
4 COM. FORESE: No.  
5 CHMN. LITTLE: Commissioner Burns.  
6 COM. BURNS: No.  
7 CHMN. LITTLE: Okay. Commissioner Tobin?  
8 COM. TOBIN: Mr. Chairman, I have no comments on  
9 this issue.  
10 CHMN. LITTLE: Okay. Considering the hour, it  
11 is now 12:40 -- we have one item remaining that was not  
12 to be heard before 1:00 p.m., that item being No. 28,  
13 Black Mountain Sewer Corporation -- I am going to  
14 declare this open meeting in recess until 1:30 p.m.  
15 (The Certified Reporter was excused.)  
16 (TIME NOTED: 12:41 p.m.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 STATE OF ARIZONA )  
2 COUNTY OF MARICOPA )

3 BE IT KNOWN that the foregoing proceedings were taken  
4 before me; that the foregoing pages are a full,  
5 true, and accurate record of the proceedings all done to  
6 the best of my skill and ability; that the proceedings  
7 were taken down by me in shorthand and thereafter  
8 reduced to print under my direction.

9 I CERTIFY that I am in no way related to any of  
10 the parties hereto nor am I in any way interested in the  
11 outcome hereof.

12 I CERTIFY that I have complied with the  
13 ethical obligations set forth in ACJA 7-206(F)(3) and  
14 ACJA 7-206 (J)(1)(g)(1) and (2). Dated at Phoenix,  
15 Arizona, this 13th day of April, 2016.

16 \_\_\_\_\_  
17 COLETTE E. ROSS  
18 Certified Reporter  
19 Certificate No. 50658

20 I CERTIFY that Coash & Coash, Inc., has complied  
21 with the ethical obligations set forth in ACJA 7-206  
22 (J)(1)(g)(1) through (6).

23 \_\_\_\_\_  
24 COASH & COASH, INC.  
25 Registered Reporting Firm  
Arizona RRF No. R1036

Coash & Coash, Inc.

# **Exhibit No. K**

ORIGINAL

OPEN MEETING AGENDA ITEM

**COMMISSIONERS**  
DOUG LITTLE - Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN



**ARIZONA CORPORATION  
COMMISSION**

0000107024

**BOB BURNS  
COMMISSIONER**

Direct Line: (602) 542-3682  
Email: RBurns-web@azcc.gov

April 20, 2016

RE: Arizona Public Service Lost Fixed Cost Recovery Mechanism, Docket No. E-01345A-11-0224

Dear Chairman Little and Commissioners:

When this matter was discussed at the April Open Meeting, I expressed my frustration with APS's refusal to comply with my ongoing requests for information. I am concerned about the way my statements have been portrayed and now seek to elucidate my position.

I will consider every case that comes before this Commission on its merits. In my role as an elected commissioner, I will not prejudge matters until I have fully considered the issues, the record, and any other related information. The health and safety of ratepayers is of the utmost importance to me, and other matters, such as potential rate changes, are also important issues for this Commission to decide. I will, however, continue to explore every means available to me to acquire the information that I have ordered from APS.

In his April 13, 2016 letter to this docket, Commissioner Tobin requested an "immediate emergency meeting of the Commission" to re-address this matter. While I do not believe this matter warrants an "emergency" meeting, I expect it will appear at a future open meeting based on the other commissioners' comments. At that time, I will consider it based on the relevant information, and I look forward to my future full consideration of all APS matters.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert L. Burns".

Robert L. Burns  
Commissioner

Arizona Corporation Commission

**DOCKETED**

APR 20 2016

DOCKETED BY

A handwritten signature in black ink, appearing to be a stylized "K" or "L".

2016 APR 20 AM 10 38  
AZ CORP COMMISSION  
DOCKET CONTROL

# **Exhibit No. L**

## DRAFT REVISED 1

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 In the Matter of: ) AU-00000E-16-0270  
 4 Commission discussion, )  
 5 consideration, and possible vote )  
 6 on whether to allocate funds )  
 7 from the Commission's budget for )  
 8 payment in furtherance of the )  
 9 scope of work associated with )  
 10 the August 2, 2016 contract with )  
 11 outside counsel, or, ) STAFF MEETING  
 12 alternatively, to suspend the )  
 13 allocation of funds for that )  
 14 contract pending submission of a )  
 15 revised scope of work to be )  
 16 developed by the Executive )  
 17 Director, in consultation with )  
 18 each Commissioner, and presented )  
 19 to the Commission for )  
 20 consideration within 45 days. - )  
 21 Commissioner Tobin. )

13

14 At: Phoenix, Arizona

15 Date: August 11, 2016

16

TRANSCRIPT OF PROCEEDINGS

17

AGENDA ITEM 3

18

TRANSCRIBED FROM AN AUDIO RECORDING

19

20

ARIZONA REPORTING SERVICE, INC.  
 Audio Transcription Specialists  
 2928 North Evergreen Street  
 Phoenix, Arizona 85014-5508

21

22

23

Transcribed by:  
 Katherine A. McNally  
 CERTIFIED TRANSCRIBER  
 CET\*\*D-323

24

25

ARIZONA REPORTING SERVICE, INC.

www.az-reporting.com

(602) 274-9944

Phoenix, AZ

# DRAFT REVISED 1

2

1 BE IT REMEMBERED that a Staff Meeting was held  
2 at the Arizona Corporation Commission, 1200 West  
3 Washington Street, Phoenix, Arizona, commencing on the  
4 11th day of August, 2016.

5

6 BEFORE: DOUG LITTLE, Chairman  
7 ANDY TOBIN, Commissioner  
8 TOM FORESE, Commissioner  
9 (Appeared telephonically)  
10 BOB STUMP, Commissioner  
11 BOB BURNS, Commissioner

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

## APPEARANCES:

For the Arizona Corporation Commission:

Janet Wagner, Assistant Director, Legal Division

Katherine A. McNally  
CERTIFIED TRANSCRIBER  
CET\*\*D-323



1 (Commencement of Item Number 3 at 00:32:30.)

2 CHMN. LITTLE: Moving to Item 3 of the agenda,  
3 Commissioner Tobin.

4 COM. TOBIN: Thank you. Mr. Chairman, I have --  
5 I'm a little dismayed about the scope of work that I was  
6 presented with, in the announcement by our Executive  
7 Director, of the hiring. And there's a lot of reason  
8 for that, mostly because I have a lot of scope of work  
9 I'd like to see implemented as well.

10 And I get a sense like this was pretty  
11 particular and pretty specific to somebody's personal  
12 intentions from the Corporation, rather than all of our  
13 Commissioners getting together and speaking to the  
14 Executive Director and prioritizing those pieces that we  
15 think need attention -- or at least consulting services  
16 that may be able to make recommendations, whether it be  
17 budget or policy or process, procedure, rules.

18 I mean, I have a plethora, whether it be  
19 Staffing, elections issues, open meeting review. I  
20 mean, I think there's a plethora of items that I think  
21 is important for each Commissioner to be able to express  
22 to the Executive Director. And we'll pick our top 10 or  
23 whatever we think it works, and then have a conversation  
24 about what that scope of work is, and then make a  
25 decision going out for an RFP for somebody to handle

1 those specifics on that scope of work, rather than just  
2 having each one of us now go to Jodi and just say, you  
3 know, I have a procedure issue; I have a rules issue. I  
4 want you to hire me an attorney. Here's the scope of  
5 work. And here's -- by the way, here's the lawyer.

6           You know, so my view is that whatever we have  
7 just done in hiring, I want it halted, so that this  
8 Commission, as a whole, can coordinate what are the  
9 priorities of the Commission and move forward. And I  
10 don't see that that's happening with this current  
11 process.

12           CHMN. LITTLE: Well, and Commissioner Tobin, I  
13 share some of your concerns. I think my concerns are  
14 slightly different than yours. One of the things that  
15 I'm quite concerned about -- and I expressed this  
16 concern after the announcement of this particular  
17 contract.

18           First of all, in my opinion, I question whether  
19 or not such a project as Commissioner Burns has  
20 requested needs to happen at all, number one. And that  
21 is based on my personal observation that over the past  
22 year and a half here at the Commission one of the things  
23 that he's requesting in this scope of work is that a  
24 gentleman be hired to determine whether or not there is  
25 undue influence being exerted on Commission Staff or

1 Commissioners from outside stakeholders. And in the  
2 year and a half that I've been here, I have seen nothing  
3 in any interaction with any outside stakeholders. I  
4 have seen nothing in any interactions with Staff and  
5 outside stakeholders that would lead me to believe that  
6 we have an issue here, currently.

7 And to spend nearly \$100,000 worth of taxpayer  
8 money is concerning to me, because I, quite frankly,  
9 don't see the specific need for it.

10 Now, that's the one issue.

11 I think the other issue is that after seeing the  
12 scope of work, which I, by the way, expressed concerns  
13 to Ms. Jerich that I thought the scope of work was  
14 overly broad. And in response to that, I think you  
15 actually have looked at the possibility of narrowing the  
16 scope of work somewhat -- or at least clarifying the  
17 scope of work.

18 But that really got me thinking about some  
19 things. So I actually went out and did a little bit of  
20 research on a couple things. And I found some things  
21 that were very concerning to me because one of the  
22 things that the scope of work identified was a desire to  
23 have a neutral third party perform this work on, you  
24 know, Commissioner Burns' behalf.

25 And when reviewing a -- I went out and reviewed

1 Scott Hempling's client list, I found a couple things  
2 that were interesting. I found, one, that he has done  
3 quite a bit of work for a public interest organization  
4 called the Energy Foundation. And in fact, he's also  
5 been funded for a special project called "Marrying  
6 Federal Power Act law with cost-effective environmental  
7 objectives". And that work was funded by a grant from  
8 the Hewlett Foundation and the Energy Foundation.

9           So doing, again, a little bit of homework, I  
10 pulled the Form 990s for the Energy Foundation, which is  
11 located in San Francisco, and I found that in 2012,  
12 former Commissioner Kris Mayes, who is on the board of  
13 that organization, was paid for approximately two hours  
14 of work a week. This is the pro forma for the -- for  
15 the board members. She was paid \$31,500 for  
16 approximately two hours worth of work a week.

17           Now, that is remarkable because most of the rest  
18 of the directors were paid either 6 or 40 -- \$6,000 or  
19 \$4,500. That was '12.

20           In '13, she was paid \$88,000 a year, again, for  
21 a two-hour-per-week approximate workload. And again,  
22 the vast majority of the other board members either  
23 received compensation of either \$6,000 or \$4,500.

24           And in '14, the compensation did drop back more  
25 into line, again, based on a two-hour-per-week

# DRAFT REVISED 1

1 contribution, it was \$6,500. But in a period of three  
2 years, Commissioner Mayes received compensation in the  
3 amount of \$126,000.

4 Now, it strikes me as also very interesting that  
5 a company -- or an organization called Save Our AZ  
6 Solar, which is currently being administered by former  
7 Commissioner Mayes has spent approximately \$457,000 in  
8 support of Commissioner Burns' campaign as an  
9 independent expenditure committee.

10 It begins to ask the question in my mind whether  
11 or not this Mr. Hempling is actually an independent  
12 party or not. I would submit that he has enough of a  
13 connection to the Energy Foundation and the Energy  
14 Foundation has enough of a connection to former  
15 Commissioner Mayes and former Commissioner Mayes has  
16 enough connection to the independent expenditure  
17 committee that I would submit that he probably is not an  
18 appropriate choice for an independent investigation.

19 If there's a sense from the rest of the  
20 Commissioners that there is indeed a need for some type  
21 of investigation like that -- which personally I don't  
22 feel that there is -- that if other Commissioners feel  
23 that there is a need for it, I certainly think it's  
24 worth talking about to determine whether or not there is  
25 another person that we could possibly retain.

1           But the thing that I am very concerned about is  
2   that any investigation -- and I hesitate to even call it  
3   that -- even any examination that we might do of this  
4   nature would of necessity need to be by someone who is  
5   absolutely irreproachable in terms of their  
6   independence. And I just don't feel, based on the  
7   information that I've been able to discover on the  
8   public Internet, that that's the case here.

9           COM. BURNS: Well, if I could have an  
10   opportunity to respond.

11           I think that it's very clear in the constitution  
12   and in the statutes that a single Commissioner has the  
13   authority to examine records of a corporation. And so  
14   with that authority, obviously comes a need to have  
15   somebody to do that work, and representatives of the  
16   Commissioner are certainly mentioned and allowed in that  
17   process.

18           So I think I have the legal authority to go  
19   forward with the attorney that I decide to hire.  
20   That's -- if I have the independent authority, then I  
21   have the authority to hire who I need to fill the bill.  
22   And this gentleman has extensive experience, especially  
23   in the utility -- the examination of utilities and so  
24   forth. So I think he is independent, and I'm not sure  
25   that that's the key point. I think it is a key point.

1           But it's somebody that based on his experience  
2   and his resume I felt was the best person for the job.  
3   I have the authority to hire, and so I went ahead and  
4   hired him.

5           Now, if you want to expand the scope of work,  
6   that was part of this plan. Part of this plan is to  
7   have you talk to this man and express what you think  
8   needs to be done different than what we have in our  
9   scope of work. Now, obviously it's -- if we add things  
10   to the scope of work, we're going to add costs, so I  
11   think that needs to be considered as well.

12           Now, if you -- this was a part of the plan was  
13   for all Commissioners -- he wants to talk to all the  
14   Commissioners. He does not want to have just a single  
15   contact; he would like to work with all of us. And so  
16   that is part of the plan was to have you and each one of  
17   you meet with him and discuss what you think -- if you  
18   think there's something missing, then I think you  
19   express that to him. But I think we ought to have -- we  
20   ought at least have that opportunity to have that  
21   discussion.

22           We have him scheduled to arrive here. He's  
23   currently out of the country. So when he is available,  
24   I think the first thing we ought to have is you ought to  
25   have your discussion with this -- with this gentleman

1 and express what you think might be missing.

2 CHMN. LITTLE: And Commissioner Stump? Go  
3 ahead, Commissioner Stump.

4 COM. STUMP: Yeah. I just -- they were  
5 conferring.

6 COM. BURNS: It's just been pointed out here  
7 that Mr. Hempling has worked for at least 27 state  
8 Commissions. I mean, this guy is -- has extensive  
9 experience. I mean, Texas and Oklahoma, Mississippi,  
10 North Carolina. I mean --

11 CHMN. LITTLE: Commissioner Burns, I'm not  
12 contesting his depth of experience. I'm contesting the  
13 fact that he has been affiliated with an organization  
14 who has been affiliated with an organization who has  
15 funded a campaign on your behalf. How is that going to  
16 make him an independent entity?

17 COM. BURNS: Well, if he had an affiliation in  
18 the past with somebody, that doesn't mean he still has  
19 that affiliation. I don't understand the connection. I  
20 mean --

21 COM. FORESE: May I ask a question,  
22 Mr. Chairman?

23 COM. BURNS: If you don't mind, I've got the  
24 floor, Mr. Forese. I'd like to finish my comment.

25 I've worked with people in the past. I have



1 no -- I've had affiliations with, but I have no more  
2 connection (indiscernible) my life. It -- you move on.  
3 You don't have -- you don't stay connected forever.

4 CHMN. LITTLE: I think Commissioner Stump was up  
5 next. And Commissioner Forese, I'll ask you to -- if  
6 you don't mind waiting until Commissioner Stump makes  
7 his comment.

8 COM. FORESE: Sure.

9 COM. STUMP: Thanks, Mr. Chairman. And Bob,  
10 just so you know, you know, we've been -- we were seat  
11 mates at the legislature for years and you're a good  
12 man. I'm not questioning your motives or sincerity when  
13 I ask the questions I'm about to ask. And let me sort  
14 of lay out the issue as I see it.

15 To my mind -- and this is addressing the need --  
16 the very need for this -- we have allegations about a  
17 utility spending dark money to affect the outcome of an  
18 election. This is legal. It may not be nice. But to  
19 the best of my understanding, only changing the law will  
20 prevent it from happening again. And as far as I know,  
21 there's absolutely nothing that we, as Commissioners,  
22 can do to prevent anyone from spending money in races  
23 for the Commission, short of changing the law. So there  
24 are allegations that are there.

25 We have proof, however, because they admitted it

1 when they were forced to do it, that the biggest entity  
2 that has business before this Commission funded a dark  
3 money group to harass and smear and sue sitting  
4 regulators to try to alter regulatory outcomes.

5 It's anyone's right to engage in and spend money  
6 in an election, obviously whether we like it or not.  
7 But it's no one's right to spend dark money against  
8 sitting regulators in a quasi judicial sitting.

9 So to my mind, it's outrageous for Solar City to  
10 fund a dark money group to interfere with the sanctity  
11 of this Commission's quasi judicial processes. So --

12 COM. BURNS: Well, could I --

13 COM. STUMP: Yeah. Well, I'm almost -- oh,  
14 sure; oh, sure. And I'm almost done. That leads to my  
15 question. So this is without a shadow of a doubt an  
16 attempt in my view to exert undue influence upon the  
17 Commission.

18 So that leads to my first question, Bob, in  
19 terms of the scope of the inquiry, will this just  
20 alleged utility attempt to exert undue influence? Or  
21 will it include nonregulated entities which, needless to  
22 say still have business before the Commission? So that  
23 was my first question.

24 COM. BURNS: Well, okay. Well, it does include  
25 some -- these outside groups.

1 COM. STUMP: Okay.

2 COM. BURNS: People that come before the  
3 Commission. I mean, that's part of the goal here is to  
4 find out what is going out, what is going on outside of  
5 the Commission that might have some kind of negative  
6 impact on our processes and on our manner of doing our  
7 job and so forth.

8 COM. STUMP: Okay.

9 COM. BURNS: So this is a guy who does big  
10 picture examinations. And so I would even say that with  
11 the lien program, which we are certainly spending some  
12 money on, sort of doing the inside drill down, if you  
13 will, could be complemented by having this outside drill  
14 down by an expert in the business to evaluate and  
15 provide us with reports and information about what he  
16 sees with his set of eyes that might be fixed.

17 Now, to say that there's nothing wrong, I think,  
18 is just not dealing with reality. I mean, we have had a  
19 hundred, and I think -- this morning, I think it was 107  
20 records requests come before this Commission. Today --  
21 this evening it's 109 -- we got two more today. So it's  
22 a never-ending issue, and it's costing us a tremendous  
23 amount of money.

24 So from that point alone, if we were to at least  
25 have some information available for people out there to

1 understand what's going on, I would hope that this flood  
2 of records requests could be turned back.

3 Now, the issue about spending taxpayer money, I  
4 think was also brought up. And I'd like to go through  
5 the list of what we've been spending for attorneys here  
6 at the Commission.

7 We had Contalmi (phonetic), you know, his rates  
8 were like \$275 -- \$295 an hour; the cost \$81,863.26.  
9 Tim LaSota, \$235 an hour; ended up being \$14,462. Kory  
10 Langhofer, \$275 an hour, \$2,862.50. Edward Novak, \$325  
11 an hour, \$90,000. We've got close to \$35,000 that we  
12 are spending on the lien program, as I understand, at  
13 this point, a number that could increase.

14 The independent contractors hired by the  
15 Commission in 2015 and 2016 for the UNS rate case,  
16 \$202,744.50. The TEP rate case, \$240,887 total. Two  
17 contracts, actually, TEP -- okay, it was broken down  
18 between the two here at \$215 and \$25. The value and  
19 cost of distributed generation, \$50,000. APS rate case,  
20 \$131,500. Southwest Gas rate case, \$154,950. So the  
21 APS FERC formula rate filing 50,000. Arizona Water  
22 Company rate case \$22,900. Sulphur Springs Valley  
23 Electric Coop, \$27,274.

24 CHMN. LITTLE: We get the idea where you're  
25 going.

## DRAFT REVISED 1

1 COM. TOBIN: I'm all right to get rid of all of  
2 those, if it's all right with you.

3 CHMN. LITTLE: Well, and what I would object --

4 COM. BURNS: I don't think you're going to get  
5 rid of them.

6 MALE SPEAKER: Right.

7 COM. BURNS: It might sound good, but I don't  
8 think they're going anywhere.

9 CHMN. LITTLE: What I would -- what I would  
10 observe is that the legal expenses that we pay in  
11 prosecuting a rate case are considered a normal expense  
12 of doing business here. We have to, in some cases, hire  
13 outside counsel to work with our in-house counsel to  
14 prosecute those rate cases.

15 COM. BURNS: Well, if our processes here are out  
16 of whack and need to be fixed, then that's a legitimate  
17 expense (indiscernible).

18 CHMN. LITTLE: If you would -- you didn't let me  
19 finish my thought, okay? And I want to just say this,  
20 and then I want to let Commissioner Forese speak because  
21 he's been very patient and I don't -- I want to make  
22 sure he doesn't --

23 COM. FORESE: Yes, I have.

24 CHMN. LITTLE: -- I want to make sure that I  
25 don't forget it. We haven't forgotten you, Commissioner

1 Forese.

2           The first ones that you mentioned, Contalmi  
3 and -- and LaSota and Langhofer and Novak were attorneys  
4 that were hired to defend sitting Commissioners  
5 (indiscernible) outside legal attacks.

6           This is an attorney that we are considering  
7 hiring to essentially evaluate the practices that occur  
8 here. And my original contention goes -- I'm going to  
9 go right back to it -- you're basically saying in the  
10 scope of work that you feel that there have -- and the  
11 way the scope of work is worded, it says there may or  
12 may not have been outside influence. And what I'm  
13 saying is that I don't believe there is any evidence for  
14 it. I think it's a fishing expedition, and I think it's  
15 a waste of taxpayer money.

16           Now, if -- that's my personal opinion. If there  
17 is disagreement on that and the Commissioners would like  
18 to expend that money, that's fine. So that's -- I  
19 wanted to -- but I wanted to bring that back around.

20           And Commissioner Forese, I'm going to let you  
21 have the floor for a few minutes.

22           COM. FORESE: Yeah. And thank you. You know,  
23 we're talking to a man who has a famous reputation as a  
24 conservative Chairman of Appropriations who now is  
25 saying that our correct course of action in the face of

1 this legal spending is to spend additionally. I think  
2 the fact that this is blatantly political begs the  
3 question, if you know that this attorney is tied to this  
4 money being donated to your campaign, why not save the  
5 taxpayers this money and just have him be paid out of  
6 this money being donated to your guy by his other  
7 clients?

8 COM. BURNS: Well, I'm not sure I understand  
9 that question. There's no way -- if there's an  
10 independent expenditure being done in a campaign, it's  
11 the same situation that you and Mr. Little were in in  
12 the year that you were running. You don't know --

13 COM. FORESE: Thank you.

14 COM. BURNS: -- about that (indiscernible).

15 COM. FORESE: You are now in the same exact  
16 position that (indiscernible).

17 COM. BURNS: Well, and I'm not sure what the  
18 point is. I mean, if you're --

19 CHMN. LITTLE: The point, Commissioner Burns, is  
20 that you've been accusing Tom and I of being under the  
21 undue influence of --

22 COM. BURNS: That is an absolute lie.

23 CHMN. LITTLE: I can --

24 COM. BURNS: And I don't know where you're  
25 getting that information.

1 CHMN. LITTLE: I can read it in the Clean  
2 Election --

3 COM. BURNS: I have not been doing that --  
4 voters.

5 COM. BURNS: I have not done that.

6 LITTLE COM. TOBIN: (Indiscernible.) You haven't  
7 specifically named names.

8 COM. BURNS: I have not done that.

9 LITTLE COM. TOBIN: But you've made the allusion very  
10 clear that you believe that there was regulatory capture  
11 that occurred as a result of APS spending -- allegedly  
12 spending money in the 2014 election.

13 Now, I don't know who else was running in 2014  
14 for the Corporation Commission, besides myself and  
15 Commissioner Forese. So you -- if you slice and dice  
16 the words --

17 COM. BURNS: If you --

18 CHMN. LITTLE: -- any way you want to, but  
19 you've been basically impugning our integrity for a  
20 year.

21 COM. BURNS: I have not. I have been protecting  
22 your integrity every opportunity I get. When I speak to  
23 a group, I tell them that you and Mr. Forese were  
24 unaware of where that money came from until after the  
25 election, just like everybody else, that you had no --



1 no knowledge of where that money was coming from.

2 CHMN. LITTLE: I want to be very clear. Today,  
3 sitting here in this room, I still don't know who spent  
4 that money and neither does Commissioner Forese.

5 COM. BURNS: Okay. Well, maybe we ought to find  
6 out.

7 COM. TOBIN: The allegations are that it was  
8 done by APS. Now, I submit -- and I'm going to go back  
9 on this, because I've said this many times before --  
10 there were many, many organizations that were business  
11 organizations that supported Commissioner Forese and I  
12 during our campaign. We were supported by the Arizona  
13 Chamber. We were supported by the Home Builders. We  
14 were supported by the Southern Arizona Home Builders.  
15 We were supported by the Southern Arizona Chamber. We  
16 were supported by the Cattle Association. We were  
17 supported by the Realtors. Other people could have made  
18 those expenditures -- somebody other than APS.

19 But that hasn't been the narrative in the media,  
20 and that certainly hasn't been the narrative that you've  
21 supported.

22 COM. BURNS: Well, and it hasn't been denied by  
23 the APS either. So I think it would be a -- a service  
24 to the public to find out what's going on with a  
25 regulated utility.

1           And I'm not telling anybody that you're unduly  
2   influenced. I'm concerned about the future of who comes  
3   to run for the Corporation Commission and how they are  
4   perceiving these large sums of money being pumped into  
5   these campaigns. I think we end up attracting the wrong  
6   kind of people to run for the Commission. And I have  
7   over and over said that, in public, on the air waves,  
8   that I believe you guys, the two of you actually got in  
9   underneath the wire here in this situation where the  
10  dark money started flowing to the regulated -- from the  
11  regulated utility to the Commission candidates.

12           COM. TOBIN: So we can -- we can start off, if I  
13  can interrupt. You don't believe there's any regulatory  
14  capture here at the Corporation Commission?

15           COM. BURNS: Not at this point in time, no.

16           COM. TOBIN: Okay. So --

17           COM. BURNS: But I think the potential is  
18  extremely possible with -- you know, if the regulated  
19  utility -- and it doesn't have to be APS -- it can be  
20  any regulated utility -- continues to pump millions of  
21  dollars -- and it could be more than 3 or 2 or whatever  
22  the amount that was supposedly there, if there's  
23  continue -- continue to pump that kind of money into  
24  campaigns for regulators, there is a potential to have  
25  undue influence acquired by the utility at the risk of

1 the ratepayer. That's the issue to me. I think there  
2 is a tremendous risk of that potential happening. So  
3 it's --

4 CHMN. LITTLE: Okay. So --

5 COM. BURNS: I believe it's time for us -- it's  
6 time for us to find out what's going on. Let's get the  
7 record straight. We'll look at all of these guys from  
8 the outside. We're not looking just at APS. The  
9 investigation, or whatever you want to call it, the  
10 review, will take place. And Mr. Hempling is, again,  
11 like I said, big picture. He wants to look at the  
12 outside influences and how they affect.

13 CHMN. LITTLE: But you can appreciate,  
14 Mr. Burns, that you wrote -- this guy does not have a  
15 financial or partial -- or partisan interest in our  
16 decision. And then you just heard the Chairman say,  
17 clearly --

18 COM. BURNS: What guy?

19 CHMN. LITTLE: This is what you wrote about  
20 Mr. -- about your investigator, Mr. Scott Hempling. You  
21 wrote that he does not have a financial or partisan  
22 interest in our decision. That's what you stated.

23 COM. BURNS: I believe that. I don't believe he  
24 has an --

25 CHMN. LITTLE: Well, I know you -- I'm sure you

1 believe it, Bob. I'm not saying you don't believe it.

2 I'm saying the Chairman just revealed that this guy

3 works for a company that gave you a --

4 COM. BURNS: He worked for a company some time

5 ago. He works for --

6 CHMN. LITTLE: (Indiscernible) -- a half a

7 million dollars.

8 COM. BURNS: He works for -- he works for a

9 hundred companies.

10 CHMN. LITTLE: That just spent half a million

11 dollars on (indiscernible).

12 COM. BURNS: He has no knowledge of where that

13 money was coming from or who spent it.

14 CHMN. LITTLE: But you can't argue that -- that

15 the Chairman and now others who have just listened to

16 this, shouldn't have some concern when you're trying to

17 say there's a regulatory capture and the first thing

18 we're going to do is hire a lawyer who is tied to money

19 that came --

20 COM. BURNS: Well, if he's --

21 CHMN. LITTLE: -- in the back door to -- to an

22 IE for you. (Indiscernible.)

23 COM. BURNS: Well, if the investigation shows

24 that I have undue influence, I suspect he'll -- he'll --

25 CHMN. LITTLE: He'll investigate himself for

1 (indiscernible)?

2 COM. BURNS: No, not him.

3 CHMN. LITTLE: He's going to investigate you?

4 COM. BURNS: He's going to talk to all of the

5 Commissioners.

6 CHMN. LITTLE: So he's going to investigate you

7 for the hundred -- for a half a million dollars?

8 COM. BURNS: No.

9 CHMN. LITTLE: You see where I'm going with

10 this?

11 COM. BURNS: No, I don't. I don't see where

12 you're going.

13 CHMN. LITTLE: All right. I'm sorry.

14 COM. BURNS: I think you're wandering around

15 looking for straws.

16 CHMN. LITTLE: Well, I'm not really, because --

17 COM. BURNS: Well, I think you are.

18 CHMN. LITTLE: Okay. Well, excuse --

19 COM. BURNS: But then, you know --

20 CHMN. LITTLE: It seems to me --

21 COM. BURNS: I have -- I have the constitutional

22 right, yeah, and the statutory right to hire an employee

23 to do an investigation as a single Commissioner. And I

24 would like to be able to carry out the duty that I swore

25 to do as a constitutional -- I took an oath to do this,

1 so I have a job to do and I'm trying to do it.

2 CHMN. LITTLE: Right. Well --

3 COM. BURNS: And you're try -- and you're trying  
4 to block it.

5 CHMN. LITTLE: No, we all took an oath.

6 COM. BURNS: Actually, you're trying to block  
7 it.

8 CHMN. LITTLE: Yeah. I -- I -- no. Actually, I  
9 think you're completely unprepared to make this  
10 announcement on the day ballots go out, that you're  
11 going to hire this guy, which is (indiscernible).

12 COM. BURNS: I tried to hire this guy for six,  
13 eight months before -- before the election.

14 CHMN. LITTLE: Well, you (indiscernible) six,  
15 eight months before.

16 COM. BURNS: No, it didn't work that way.

17 CHMN. LITTLE: Of course, it didn't, because it  
18 was an election day.

19 COM. BURNS: Well --

20 CHMN. LITTLE: The ballots went out, Bob. So  
21 what I'm saying to you is why (indiscernible).

22 COM. BURNS: You're -- you're -- you're not  
23 telling the -- you're not sticking to the facts. The  
24 facts are I've been working on this for two years. I've  
25 been trying to get the records from APS. I asked for

## DRAFT REVISED 1

1   them to voluntarily supply those records. I asked for  
2   them -- I ordered them to provide those records. Never  
3   happened. Never happened. No cooperation.

4           CHMN. LITTLE: Did you subpoena them?

5           COM. BURNS: So -- I haven't done that. I want  
6   to --

7           CHMN. LITTLE: Why don't you do that?

8           COM. BURNS: Well, because what -- what would --

9           CHMN. LITTLE: Why don't you just subpoena  
10   (indiscernible)?

11           COM. BURNS: What would be the next Staff  
12   meeting if I subpoena, right?

13           CHMN. LITTLE: Well, they're going to probably  
14   go to court, probably, so now what you want to  
15   (indiscernible).

16           COM. BURNS: So I wanted to try and do this in a  
17   better way. I want -- I wanted to try and do this in a  
18   better way, so I looked for a different way to do that,  
19   rather than to just subpoena and just go to APS only if  
20   that's too targeted.

21           Let's look at the big picture. It took some  
22   time to figure out a game plan. It took some time to  
23   find the right person to do this. So that's what  
24   happened. I mean, it -- it drug out and it drug out and  
25   it drug out. And I would have loved to have this done

1 months ago.

2 CHMN. LITTLE: Well, on the other hand, you  
3 could have -- you're saying, let's hire Mr. Hempling, he  
4 can go and subpoena Pinnacle West, which is what you're  
5 hoping for.

6 COM. BURNS: He could -- he could go and use a  
7 subpoena.

8 CHMN. LITTLE: And they're going to put us in  
9 court. So now --

10 COM. BURNS: And --

11 CHMN. LITTLE: So now, okay, so I mean, either  
12 way, you're going to court. Why don't you just subpoena  
13 (indiscernible) and save us all the aggravation and  
14 spending the money and going no further?

15 COM. BURNS: Well, why -- why -- why don't we do  
16 it right? Why don't we do it right and use -- and use  
17 an expert? You hired an expert to do your lien program.

18 CHMN. LITTLE: You hired an expert.

19 COM. BURNS: Well --

20 CHMN. LITTLE: I brought it to this  
21 (indiscernible).

22 COM. BURNS: And I voted to support that.

23 CHMN. LITTLE: Thank you. You voted on my  
24 amendment to (indiscernible) I appreciate it.

25 COM. BURNS: And I have the -- I have the



1 authority as an individual Commissioner, based on the  
2 constitution and the law, and that's what I'm trying to  
3 do. I'm trying to do the --

4 CHMN. LITTLE: Well, do I not have the -- do I  
5 not have the authority to bring to this Commission's  
6 attention, this Item 3?

7 COM. BURNS: Yeah.

8 CHMN. LITTLE: All right. And that's all I did.

9 COM. BURNS: And you said you weren't going to  
10 block it. I asked you when we were at the debate.

11 CHMN. LITTLE: I'm not -- I didn't say --

12 COM. BURNS: And you said you weren't going to  
13 block it.

14 CHMN. LITTLE: I said I wanted to expand on it.  
15 This is what --

16 COM. BURNS: Well, and I've offered you the  
17 opportunity to do that.

18 CHMN. LITTLE: And I said, then just vote for  
19 the amendment.

20 COM. BURNS: No.

21 CHMN. LITTLE: Well, that's what does it.

22 COM. BURNS: You can meet -- you can meet with  
23 a -- with a man that already has a contract that we have  
24 signed a contract with. He's willing to talk to you.

25 CHMN. LITTLE: Well, but you hired who I now

1 believe and agree with the Chairman is a mistake because  
2 of what we just said. And I think you -- the public  
3 should see that there's some -- that this clearly is not  
4 somebody who has no interest in this (indiscernible)  
5 especially in the solar (indiscernible). So it's odd,  
6 Bob. That's all I'm saying.

7 CHMN. LITTLE: And Bob, just to go back to your  
8 statement before, I'm going to read from -- this is --  
9 I'm reading directly from the Clean Elections Candidate.  
10 This is the Candidate's statement pamphlet from the  
11 primary election. This is the -- the information that  
12 is below your name. I assume that you have  
13 responsibility for the content of this.

14 It says: A key responsibility of the  
15 Corporation Commission is to provide oversight and  
16 regulation of power and utility providers for Arizona  
17 residents. In the 2014 elections, it is believed that a  
18 certain utility spent over \$3 million to support their  
19 favorite candidates for the Corporation Commission.  
20 This campaign activity was hidden behind political  
21 nonprofit so ratepayers like you would have no idea that  
22 utilities were actively trying to choose their own  
23 regulators.

24 Now, if that is not telling somebody in public  
25 that I am a pawn of APS --

1 COM. BURNS: I don't see that written -- I don't  
2 read that that way.

3 CHMN. LITTLE: Bob, that is the most  
4 disingenuous thing you have said to me ever in my life.

5 COM. BURNS: I mean, (indiscernible) see what  
6 you've got there (indiscernible).

7 CHMN. LITTLE: It's right here. It's -- it's  
8 the Candidate guide.

9 COM. BURNS: (Indiscernible) let me see it.

10 CHMN. LITTLE: It's right there. That -- that  
11 particular document was mailed to every voter in the  
12 state of Arizona.

13 COM. BURNS: Well, I think you're overreacting  
14 here. I -- I think you're -- you're --

15 CHMN. LITTLE: I -- I -- my -- my father once  
16 told me that a man only has his integrity; and without  
17 his integrity, he is nothing. And you've basically  
18 challenged my integrity. You (indiscernible) --

19 COM. BURNS: I did not challenge your integrity.  
20 I challenged the integrity of APS.

21 CHMN. LITTLE: So --

22 COM. BURNS: APS is the one that's put the cloud  
23 over this Commission and over your candidacy, and -- and  
24 not --

25 CHMN. LITTLE: And -- and -- and --

1 COM. BURNS: It's not your fault.

2 CHMN. LITTLE: Commissioner Burns, I want you to  
3 present one piece of evidence that APS spent any money  
4 on the campaign at all, one.

5 COM. BURNS: Give me this investigator and I  
6 might be able to find that evidence. And then the  
7 public --

8 CHMN. LITTLE: You can do it without spending a  
9 hundred thousand dollars of the taxpayers' money on what  
10 I consider to be a wild goose chase.

11 COM. BURNS: Well, I don't consider it a wild  
12 goose chase. And I've had a lot of people that have  
13 told me that it's not a wild goose chase and that I  
14 should proceed. And I have the constitutional authority  
15 to proceed, and I intend to proceed.

16 CHMN. LITTLE: So --

17 COM. BURNS: And so, if you block this, to me,  
18 you're basically taking away my authority as an  
19 individual Commissioner to do my job.

20 CHMN. LITTLE: So your individual authority is  
21 certainly something that I would not restrict you from  
22 or strip from you, however --

23 COM. BURNS: Well, I wouldn't hope so, because  
24 you have the same authority.

25 CHMN. LITTLE: However, when we make an

1 expenditure of funds, I believe -- and I would be  
2 looking for a legal opinion here, Ms. Wagner, and if we  
3 need to go into executive session to discuss it, we  
4 can --

5 COM. BURNS: Not according to the --

6 CHMN. LITTLE: -- but I believe that if we were  
7 to be looking at an expenditure of Corporation  
8 Commission funds with an external organization, that the  
9 Commissioners could vote to either approve or defund  
10 something if they chose to.

11 And I would be curious about your legal opinion  
12 on that.

13 MS. WAGNER: Mr. Chairman, members of the  
14 Commission, Janet Wagner for the Legal Division.

15 It's a difficult meeting. You're correct, the  
16 way that you would move forward, if that is your desire,  
17 would be to indicate that the allotment of the  
18 Commission's budget would not be available for this  
19 purpose.

20 CHMN. LITTLE: Now, Commissioner Burns, this  
21 does not prevent you from doing it, because as I  
22 understand it, you have an office budget that you  
23 control the expenditure of your own office budget. And  
24 you could disburse funds from your own office budget to  
25 retain this attorney, if you chose to do so.

1           So we're not essentially preventing you from  
2 moving forward with this, because if you look at the  
3 constitutional authority that you have, it says that you  
4 can use your Staff or other individuals that you might  
5 retain and you have control of that office budget. You  
6 have the ability to disburse that office budget as you  
7 see fit. So if you want to spend your own office  
8 budget, I would say that would be fine with me.

9           COM. BURNS: And you realize, of course, very  
10 well, that that office budget would not cover the cost  
11 of this investigation. So that would be a moot point.  
12 And so --

13           CHMN. LITTLE: Well, sir, you also have the  
14 opportunity to -- and -- and -- you know, I'm sure that  
15 you could solicit contributions to a legal fund that  
16 would -- would potentially fund it.

17           COM. BURNS: Well, I guess a couple of things.  
18 I find it sort of odd that an investigation into the  
19 potential undue influence on Commissioners, and not the  
20 Commissioners sitting here presently, but Commissioners  
21 in the future, isn't a problem. You don't see that as a  
22 problem.

23           And so it's -- it just -- to just flat out  
24 refuse to examine that possibility, just to do an  
25 investigation to determine if there's the potential for

1 that to happen, to put the ratepayers of the state of  
2 Arizona at risk at having an unfair advantage when it  
3 comes time for rate setting, because of the influence  
4 that a utility -- and I'm -- it doesn't have to be APS,  
5 it could be any utility -- could gain undue influence by  
6 spending millions and millions of dollars in an  
7 election, I just don't get it that you are not concerned  
8 about that.

9 CHMN. LITTLE: So can --

10 COM. BURNS: Now, if it's -- if, for some  
11 reason, this whole thing has turned to the point where  
12 you believe I am attacking you, that is not true;  
13 absolutely not true. I have tried to tell everybody  
14 I've talked to that you guys did not know where the  
15 money was coming from. It was an independent  
16 expenditure, and by law you couldn't know. And so you  
17 guys got in under the wire, in my opinion, on this whole  
18 situation.

19 But in the future, in the future, if people  
20 believe that a utility is going to spend millions of  
21 dollars on their behalf in an election, what kind of  
22 people are we going to attract to this Commission? I  
23 think it has the potential of -- of corrupting the  
24 Commission. And so I think we need to do something  
25 about it.

1 CHMN. LITTLE: Commissioner Burns.

2 COM. BURNS: And the way we do something about  
3 it is we examine what's going on in -- in -- in the 2014  
4 and beyond with the outside influences on the  
5 Commission.

6 CHMN. LITTLE: So perhaps I'm just a  
7 glass-half-full guy and maybe you're a glass-half-empty  
8 guy, because I believe that people seek public office in  
9 order to do public service. That is why I sought  
10 political office, to do public service.

11 COM. BURNS: As I did.

12 CHMN. LITTLE: And -- let me -- let me finish.

13 COM. BURNS: But there are people that are in  
14 public office that did not seek public office  
15 (indiscernible).

16 CHMN. LITTLE: So you can go and you can do the  
17 research. There was a -- a significant Supreme Court  
18 case in 2010 called Citizens United, and the Supreme  
19 Court was very clear in their decision on this. They  
20 believe that corporations are allowed to have political  
21 speech. And they believed -- and it's stated very  
22 clearly in that opinion -- that political speech --  
23 spending money on a desired candidate or a desired  
24 ballot proposition or some referendum, spending money on  
25 behalf of that was considered political speech.



1           Now, the Court also went to great lengths to say  
2   that by simply contributing to a particular candidate or  
3   a particular ballot proposition, that that was not  
4   considered to be, on its face, evidence that there would  
5   be undue influence on that particular elected official.

6           You can go back and read the law.

7           COM. BURNS: Well, and you can also go back and  
8   listen to some of the statements of some of those  
9   Supreme Court Justices after that case, where they  
10   pointed out that there ought to be disclosure, that  
11   there should be disclosure.

12           CHMN. LITTLE: And if you go back and look at  
13   the majority opinion -- and I believe it was written  
14   by -- I honestly don't remember, and I don't want to  
15   misstate -- the majority opinion basically said that  
16   forced disclosure in this particular instance would have  
17   a chilling effect on a corporation or an independent  
18   group's ability to participate in the process.

19           Because, you know, here's the situation you run  
20   into. Let's say a corporation -- let's say a water  
21   company is supportive of a candidate. And let's say,  
22   just for the sake of argument, that candidate is  
23   pro-choice, and many of the customers of that water  
24   company are pro-life. If they were to find through  
25   disclosure that their preferred water company was

1 pro-choice, they may actually not want to do business  
2 with that water company because they don't agree with  
3 the political choice that water company made.

4 Is that fair to the water company? No, it's  
5 not. Just like it's not --

6 COM. BURNS: Well, wait a minute, wait a minute.  
7 We're dealing with monopolies here who have a captured  
8 clientele.

9 CHMN. LITTLE: I'm talking about a regulated  
10 monopoly.

11 COM. BURNS: That's right.

12 CHMN. LITTLE: I'm talking about one of our  
13 regulated water companies.

14 COM. BURNS: And so the water company customer  
15 is going to walk away because he doesn't like the  
16 politics of the water company? I don't think so.  
17 There's a difference between the nonregulated --

18 CHMN. LITTLE: They may not walk away --

19 COM. BURNS: -- the nonregulated corporation and  
20 the regulated corporation.

21 CHMN. LITTLE: They may not walk away,  
22 Commissioner. But they -- the relationship -- it would  
23 be tainted. And this is precisely the reason that the  
24 Court found as it did. And -- and when we had this  
25 brouhaha back in September of this past year, I received

1 numerous phone calls from numerous companies after they  
2 were in receipt of your letter and the letter that  
3 Commissioner Bitter Smith send out, saying basically,  
4 does this mean that if we don't do what this letter  
5 says, that we're going to be on the political bad list  
6 at the Commission and our decisions are not going to be  
7 viewed in a favorable manner? They felt like it was  
8 blackmail.

9 COM. BURNS: Well, I'm sorry that they felt that  
10 way. It certainly was not. It was a notice and a  
11 request for them to voluntarily stay out of the  
12 elections.

13 CHMN. LITTLE: Come on. A request from a  
14 sitting regulator?

15 COM. BURNS: And they -- and every -- and -- I  
16 think we can do requests.

17 CHMN. LITTLE: That regulates them? Really?

18 COM. BURNS: I think we can do requests, yes, I  
19 think we can. And we did. And I'll tell you that the  
20 responses we got from the major utilities, Southwest  
21 Gas, TEP, UNS, was all that they would voluntarily stay  
22 out. The only major utility, regulated utility, that  
23 did not respond and say that they would stay out was  
24 APS.

25 CHMN. LITTLE: Commissioner Burns, you realize

1 that your letter -- and -- and this is shocking to me  
2 for someone who claims to be a Republican -- your letter  
3 basically asks those companies to abandon their first  
4 amendment right.

5 COM. BURNS: No way. No way.

6 CHMN. LITTLE: Does -- does anybody else --

7 COM. BURNS: Nobody said -- no -- nobody said  
8 they couldn't spend in the election. We still haven't  
9 said that. I have not said that. I have repeatedly  
10 said, when I talk to groups, the utility has the  
11 constitutional right based on a Supreme Court order to  
12 contribute to campaigns.

13 The issue is that they need to report. And why  
14 are they so reluctant to report? Who is going to  
15 retaliate against the utility that has a captured  
16 clientele? They're not going to take their business  
17 somewhere else. They can't. So the idea that they're  
18 going to retaliate against -- and I -- I am opposed to  
19 the retaliation that takes place against the  
20 nonregulated corporations. I think it's terrible. I  
21 think it's wrong. You've got people out there. You've  
22 got groups that go out there and hire demonstrators who  
23 boycott the companies and so forth. I think that's  
24 wrong and needs to be addressed.

25 But the -- the regulated corporation is

## DRAFT REVISED 1

1 completely different, completely different. It's two  
2 different structures. And so the regulated  
3 corporation -- the customers are captured. They have no  
4 other choice. They rely completely on the regulator to  
5 make sure that they get a fair return or a fair rate.  
6 And so if the regulator becomes unduly influenced by  
7 whatever means -- and -- and they -- Mr. Hempling is not  
8 focusing on just the election part of it; there are  
9 other means of gaining undue influence -- and so he  
10 was -- part of the study was to look at a number of  
11 different things to make sure that that's not happening  
12 or to advise us on how to prevent it from happening in  
13 the future now that we have these millions and millions  
14 of dollars being thrown at Corporation Commission  
15 races --

16 CHMN. LITTLE: Commissioner Stump.

17 COM. STUMP: Thanks. Bob, you know, Tom and  
18 Doug have been smeared for two years. And I've been  
19 smeared for over a year by Checks and Balances, funded  
20 by Solar City, in part. And I agree with you when you  
21 (indiscernible).

22 COM. TOBIN: -- I'm new to the smearing.

23 COM. STUMP: Yeah. Well, no, you've --  
24 you've -- well, there's irony in that, too, because you  
25 talk about -- or not you, but in general people talk

1 about unregulated or regulated utilities versus entities  
2 that aren't regulated by us.

3 And I found it curious, Commissioner Tobin, in  
4 your case, that suddenly when you -- your political  
5 opponents say you have a conflict, suddenly Solar City  
6 becomes important. In every other instance they're not  
7 regulated by us, so whatever they do is beyond reproach.

8 Anyway, that's neither here nor there. But  
9 Commissioner Burns, I appreciated you saying on the  
10 Horizon debate that we're dealing with false perceptions  
11 that, in my opinion, that have been actually perpetuated  
12 for crass political purposes to try to cast a pall over  
13 the Commission to damage all of us.

14 So if it's a perception problem and Tom and Doug  
15 are lily white, as indeed they are, and there's no  
16 corruption at the Commission, then my question simply  
17 is, what is there to investigate?

18 And I understand the forward-looking nature of  
19 your inquiry, as you describe it. But unless there's a  
20 structural, inherent pattern of influence that's built  
21 into our processes down here that applies to future  
22 Commissioners, I don't know how you investigate  
23 something like that. So that was my concern and you  
24 don't investigate a false perception. You dispel it.

25 So, you know, I thought perhaps, you know, if

1   there's an unfair perception, a public education  
2   campaign would be a better use of funds to try to  
3   explain our processes to the public, to indeed enable  
4   them to understand the issue of due process and how each  
5   of us strives to serve the public interest and set just  
6   and reasonable rates.

7               But my view -- and I would love to get your  
8   thoughts on this -- if it's a false perception that's  
9   not true, by definition, and you agree, as all of us do,  
10   that Tom and Doug are good men who have been severely,  
11   unfairly attacked by, quite frankly, not only moronic  
12   op-eds in some papers, but by a dark -- in my case a  
13   dark-money group funded by a nonregulated entity that  
14   has business before the Commission.

15              So I'm just trying to understand, if it's a  
16   perception problem that's -- that's simply a will o' the  
17   wisp, as I said last week, how do we -- why don't we try  
18   to dispel that? And maybe your argument is that this  
19   investigation would dispel it.

20              COM. BURNS: I believe it would.

21              COM. STUMP: But --

22              COM. BURNS: Or I believe it could. I don't  
23   know what it would -- I mean, I don't know what the  
24   results of the investigation will end up being.

25              COM. STUMP: But --

1           COM. BURNS: But I think it's -- it's -- it's  
2 the tool that we need to use to make the public -- give  
3 the public some confidence that we are what we say we  
4 are. And I -- I think the -- the issue that you bring  
5 up about the investigation against you -- or not the  
6 investigation -- the attack against you, I think this is  
7 something that this man could look into as well. It's  
8 all part of the deal here that --

9           COM. STUMP: But -- yeah. But it -- but they're  
10 trying to exert undue influence, but obviously they  
11 didn't succeed. You know, the company, quite frankly,  
12 in my opinion, that funded them was trying to intimidate  
13 regulators in Arizona and around the country. And this  
14 group, Checks and Balances, continues to operate in  
15 spite of Solar City's assurance that they are not  
16 funding them. But they did unleash the Kraken, as it  
17 were. And so they're trying to exert undue influence,  
18 but because I have integrity, Tom does, all the  
19 Commissioners, I believe, have integrity, they're not  
20 getting anywhere.

21           APS, it's been until they're blue in the face,  
22 they're not going to get anywhere. So if it's -- with  
23 that in mind and the fact that it's an unfortunate  
24 perception that they would, how do we proceed with an  
25 investigation? And what is the end result?



## DRAFT REVISED 1

1           You know, okay, well, let's say it's proven that  
2   APS or other entities spent something. We maybe  
3   confirmed our prejudices, but it doesn't mean that they  
4   had any influence on these good men. It just meant they  
5   spent money. We -- our suspicions were confirmed, so  
6   that -- that's my confusion.

7           COM. BURNS: Well, but they -- I believe they  
8   had a -- they certainly had influence on the election,  
9   quite --

10          COM. STUMP: Well, sure. And --

11          COM. BURNS: And -- and -- and the perception  
12   that you talk about, I mean, the perception in the  
13   public, I -- how can you say that the public has a good  
14   perception of this body?

15          Now, when I'm out campaigning, people come up to  
16   me and say, you guys are bought and paid for. That's  
17   part of the public perception that needs to be changed,  
18   that we need to get -- get rid of. We need to  
19   understand -- get people to understand --

20          MALE SPEAKER: Bob, they said --

21          COM. BURNS: That isn't happening.

22          MALE SPEAKER: -- (indiscernible) when you were  
23   president of the Senate.

24          COM. BURNS: Well --

25          MALE SPEAKER: They did. I mean --

1 COM. BURNS: You keep dragging all of these --  
2 off the --

3 MALE SPEAKER: Well, I'm sorry. I was there,  
4 you know.

5 COM. BURNS: Well --

6 MALE SPEAKER: I just thought I would mention  
7 it.

8 COM. STUMP: And -- and the reason -- and that  
9 is -- that is -- that saddens me.

10 COM. BURNS: Yeah.

11 COM. STUMP: It's a -- it's a sadly cynical  
12 response based on frankly the -- that is -- really was  
13 caused by the efforts of, frankly, in my view, monomania  
14 about the effects of a utility's alleged dark money  
15 spending to corrupt men that I know are good men.

16 And if we don't like dark money -- I'm not a  
17 huge fan of it -- why don't we go to the legislature or  
18 seek other legal means to try to change the law?  
19 Because going forward, an investigation will say, well,  
20 okay, the utility did spend it. And then what are we  
21 left with? The perception is -- the false perception is  
22 still there.

23 I guess there's no nexus between the fact that,  
24 okay, let's say we prove the utility spent it, fine.  
25 There's still no nexus to that spending to the character

## DRAFT REVISED 1

1 of Tom and Doug or any other commissioners.

2 Does that make sense?

3 COM. BURNS: I agree. I agree with you. But  
4 there's -- there's -- the problem is with -- at the  
5 election. All right. The -- the utility has the right  
6 to spend. They can go ahead and spend. But when they  
7 spend, they need to report. There needs to be a  
8 reporting process.

9 COM. STUMP: That's (indiscernible). Sure.

10 COM. BURNS: I believe that's our  
11 responsibility. It's not the legislature's  
12 responsibility. We have the responsibility to regulate  
13 utilities. You saw what happened here.

14 CHMN. LITTLE: And under no portion of the  
15 constitutional authority of this body is there anything  
16 that says that we have to compel disclosure of election  
17 spending on the part of our utilities. There's nothing  
18 in there that says that. Nothing.

19 COM. BURNS: No. We don't have to. But we can.

20 CHMN. LITTLE: No, we can't.

21 COM. STUMP: We don't have that authority is --

22 CHMN. LITTLE: We don't have that authority. We  
23 can open -- we can ask them to open their books, if we  
24 believe that there is a substantial nexus --

25 COM. BURNS: Well, that's a form of reporting, I

1 would say.

2 CHMN. LITTLE: You didn't let me finish.

3 COM. BURNS: Well --

4 CHMN. LITTLE: We have the authority to open  
5 their books, but the purpose we use to open their books  
6 is to understand whether or not there is an -- any  
7 impropriety that exists in the rate making process.  
8 It's not something that we have the ability to do.

9 We can't actually go and say to some company, we  
10 want to understand how you spent your lawfully earned  
11 profits. That is protected speech. That is protected  
12 by the first amendment.

13 So, you know, I think we're -- we're at a spot  
14 where, you know, we're -- we're starting to -- to move  
15 around in circles.

16 COM. BURNS: Well, I guess we might -- we might  
17 as well bring this to a close. I see where you guys are  
18 going. You're going to defund --

19 CHMN. LITTLE: Well, first of all, I want to  
20 make sure that --

21 COM. BURNS: -- and so -- you know --

22 CHMN. LITTLE: -- Commissioner Forese --  
23 Commissioner Forese, you still on the line?

24 MALE SPEAKER: I think he had to drop off.

25 So --

## DRAFT REVISED 1

1 COM. BURNS: So you're going to vote to defund.  
2 So I think the next question would be then if  
3 I'm going to do the subpoenas that I'm authorized to do,  
4 I'd like to have Staff at the Commission here to help me  
5 prepare those subpoenas so that I can move forward in  
6 sort of a "stumble along" instead of a well-organized  
7 effort, it will be not so well organized.

8 CHMN. LITTLE: So let -- let me -- let me just  
9 summarize where I think we're at, okay, and -- and I  
10 would appreciate the input from all of you.

11 There's a -- a question -- and -- and  
12 Commissioner Tobin referenced this, there could be  
13 rationale for pursuing some sort of project or  
14 evaluation or examination -- and -- and the reason I  
15 don't like to use the word "investigation", because  
16 it -- to me, the investigation word implies improper  
17 behavior. And to me there is no evidence of any  
18 improper behavior, number one.

19 COM. BURNS: Because of no investigation, maybe.

20 CHMN. LITTLE: So --

21 COM. BURNS: (Indiscernible) make a point. I  
22 mean, you know --

23 (Indiscernible - simultaneous speech.)

24 COM. BURNS: You don't investigate, you don't  
25 know.

1 CHMN. LITTLE: Gentlemen, let me finish, let me  
2 finish.

3 So Commissioner Tobin has said he would be  
4 potentially willing to consider a project, but that  
5 Mr. Hempling because of any -- to me, any remote  
6 connection that would indicate that he was not an  
7 impartial person, it would have to be somebody else. Or  
8 we could say, nope, we're not going to fund this or any  
9 other project of this type. And if you wish to pursue  
10 it, you can pursue it using your own office budget and  
11 your own Staff and that the legal Staff of the  
12 Commission under your authority would be in a position  
13 where they would issue subpoenas.

14 I believe that would be correct, would it not,  
15 Ms. Wagner?

16 MS. WAGNER: Mr. Chairman, technically the  
17 Executive Director's office issues subpoenas.

18 CHMN. LITTLE: But that Staff would assist in  
19 the preparation of those subpoenas and they would be  
20 issued by the Executive Director. Okay. So -- so I  
21 think there are different choices. I -- I'd be curious,  
22 based on this discussion, what the thoughts of  
23 Commissioner Tobin and Commissioner Stump are, relative  
24 to how they would like to move forward.

25 COM. TOBIN: Well, Mr. Chairman, I still like

1 my -- my Item Number 3. I think what it does is  
2 redirect the Executive Director to go meet with all --  
3 with all of the Commissioners -- the Commissioners, and  
4 identify the top 5, 10 needs that we want to have  
5 reviewed.

6 I have significant issues over secured -- I have  
7 significant issue -- you talk about regulatory capture.  
8 It's not just us. We have Staff who negotiates our --  
9 our stuff. Are they supposed to be included? We  
10 have -- they're included in this (indiscernible).

11 COM. BURNS: And that's what I'm saying.

12 COM. TOBIN: So maybe they -- maybe we need to  
13 have this broadened. But I have issues with respect to  
14 the priorities, the process. I have issues with  
15 procedures here. I have issues with rules. I think we  
16 direct -- you know, I mean, I think it's pretty cut and  
17 dry what my statement says. Jodi goes around, meets  
18 with all the Commissioners, gets their top 10  
19 priorities, puts together a scope of work. We go out  
20 for an RFP and let's go hire somebody if we -- if --  
21 with our -- our top 10 list or top 5, whatever we can  
22 afford to --

23 COM. BURNS: Well, based on the requirements of  
24 the person to investigate, I -- I doubt that you'll find  
25 one. You won't find one better than this gentleman

1 here. And if you're going to find one --

2 (Indiscernible - simultaneous speech.)

3 COM. BURNS: If you -- if you find somebody that  
4 has the expertise and the ability to do the job that  
5 we've prepared here, they're going to probably have some  
6 connection with some utility, some solar company, some  
7 other -- throughout the -- the industry. That's the  
8 way -- the way these people work. I mean, they work for  
9 a lot of different people. So I -- I --

10 MALE SPEAKER: I -- I just have to say,  
11 you're -- you're telling me that in all the world, there  
12 is only one lawyer that can do this job. That's just --

13 COM. BURNS: No. That's not what I said.

14 MALE SPEAKER: It sort of sounded like that.

15 COM. BURNS: I wish you could -- well, I'm  
16 telling you that he's one of the best. I didn't say  
17 he's the only one. He's one of the best, and -- and  
18 I -- I challenge you to find one better, and then find  
19 one without any connection whatsoever.

20 MALE SPEAKER: Well, he (indiscernible) have him  
21 bid.

22 COM. BURNS: Well, he doesn't have --

23 MALE SPEAKER: Have him bid on the process.  
24 Maybe you're right.

25 COM. BURNS: The man doesn't even have to bid.



1 He's -- he's got enough people coming to his door to get  
2 his -- to -- to have him work. He doesn't have to  
3 (indiscernible).

4 MALE SPEAKER: Well, I was in business all my  
5 life. I bid on everything, and I thought I was the best  
6 going forward too. So --

7 COM. BURNS: Well, I can -- I can believe you  
8 thought you were the best.

9 MALE SPEAKER: I tried.

10 MALE SPEAKER: (Indiscernible) Tobin, I  
11 entertain a motion.

12 MALE SPEAKER: I'd like to move my --

13 COM. BURNS: Well, I'd like to know something  
14 here first, before this.

15 CHMN. LITTLE: Um-hmm.

16 COM. BURNS: I want to make sure that I  
17 understand that Staff is available here at the  
18 Commission for me to move forward. I don't intend to  
19 delay another month, 2 months, 6 months. I've been on  
20 this for 2 years. I intend to move forward.

21 MALE SPEAKER: Well, go ahead.

22 COM. BURNS: And so I want to be assured that I  
23 have at least the Staff available for me to use.

24 MALE SPEAKER: Well, Mr. --

25 COM. BURNS: And then the other question is, if

1 I get a subpoena, are you going to squash it here? I  
2 mean, are we going to have a Staff meeting and squash  
3 it?

4 MALE SPEAKER: Well, Mr. Burns, first off, none  
5 of that's on the -- on the agenda. But you heard  
6 counsel will give you advice.

7 COM. BURNS: What do you mean it's not on the  
8 agenda?

9 MALE SPEAKER: You just said -- you wanted me to  
10 assure you that I would vote some way for -- for  
11 something. I'd say, well, that's not on the agenda here  
12 going forward. This is the piece that's on the agenda.  
13 I mean, you just asked me -- you said, I want to be  
14 assured going forward that if I -- I subpoena, I'm going  
15 to do something. I'm like, that -- first it's not on  
16 the agenda. Second, I don't even know what that means.

17 COM. BURNS: Well, I think there's been a few  
18 things discussed that weren't on the agenda from both  
19 sides of the table, quite possibly.

20 MALE SPEAKER: Well, well, I (indiscernible).

21 COM. BURNS: So I mean, if that's a --

22 MALE SPEAKER: (Indiscernible) back into the --  
23 to the point, and it's Item Number 3.

24 COM. BURNS: And it's defund.

25 MALE SPEAKER: You can call it whatever you

1 want, you know.

2 COM. BURNS: I mean, the result is, it's defund.

3 MALE SPEAKER: Well, no, you just --

4 MALE SPEAKER: I just -- I want that to be  
5 clear. I want people to understand.

6 MALE SPEAKER: It seems -- it seems that you  
7 heard from counsel that she -- they said they could  
8 issue your subpoena for you, so --

9 COM. BURNS: Okay.

10 MALE SPEAKER: And maybe you don't have -- you  
11 should have done that six months ago.

12 COM. BURNS: Well, I was trying to do it a  
13 better way.

14 MALE SPEAKER: Well, you --

15 COM. BURNS: Include -- I was trying to include  
16 all of the Commissioners.

17 MALE SPEAKER: Well, this -- well, you didn't on  
18 this scope of work, did you?

19 COM. BURNS: Yes, we did, on that scope of work.

20 MALE SPEAKER: You included all of these  
21 Commissioners on this --

22 COM. BURNS: On the scope of work, the first  
23 thing to happen would be interviews with all of the  
24 members, all of the Commissioners --

25 MALE SPEAKER: It's to --

1 COM. BURNS: -- to find out what they would like  
2 to have done.

3 MALE SPEAKER: So hire him and then do the scope  
4 of work.

5 MALE SPEAKER: So just -- just to be clear.

6 MALE SPEAKER: That's what you just said --

7 MALE SPEAKER: Just to be clear -- I want to be  
8 very clear about this. Just to be clear, I was handed  
9 the scope of the work for this after the contract was  
10 signed. I did not see the scope of work for this in  
11 advance of the contract being signed, the scope of work  
12 being written. I was never consulted about the scope of  
13 work. It just magically appeared on my desk on Tuesday  
14 morning, the day before early ballots went out.

15 COM. BURNS: At the authority of an individual  
16 Commissioner that has the authority to do this, so, you  
17 know.

18 MALE SPEAKER: Just making a point that this was  
19 not something that all of us were involved in. This was  
20 a project that you prepared on your own --

21 COM. BURNS: But nobody -- nobody here knew that  
22 I was in the process of doing this, of course. I mean,  
23 I asked for an attorney general's opinion to verify that  
24 I had the authority to do this on my own. So you -- you  
25 all didn't understand that that's what I was doing? I

1 mean, what else would -- what else was it? I mean, it's  
2 been known --

3 MALE SPEAKER: Go file your -- go file your  
4 subpoena, Bob. It's -- I've said that 10 times. Go  
5 file it.

6 COM. BURNS: Well --

7 MALE SPEAKER: I'm not stopping you. I -- I --

8 COM. BURNS: Yeah, you are. You're -- you are  
9 stopping me.

10 MALE SPEAKER: (Indiscernible.)

11 COM. BURNS: You're stopping me. Yes, you are.  
12 You're -- you're -- you're stopping a well organized --

13 MALE SPEAKER: I'm not stopping you -- who is  
14 organized?

15 COM. BURNS: -- scope of work.

16 MALE SPEAKER: By who?

17 COM. BURNS: Part of this -- this -- we have  
18 somebody that has the knowledge and the expert -- and  
19 experience to lay out a scope of work that gets the job  
20 done. And that's what we used, okay? So --

21 MALE SPEAKER: That's why any government they  
22 have what's called RFPs, where everybody has --

23 COM. BURNS: And they have in government -- they  
24 also have in government individual Corporation  
25 Commissioners can act to protect the ratepayer.

1           MALE SPEAKER: Which is exactly what I'm doing  
2 here today in Item 3. Just like you (indiscernible).  
3           COM. BURNS: Yep. You're -- you're -- you're  
4 just -- you're stopping my ability to do my job.  
5           MALE SPEAKER: I don't think so.  
6           COM. BURNS: Oh, yes, you are.  
7           MALE SPEAKER: I just invited you to do it.  
8 I'd like to move my Item 3.  
9           CHMN. LITTLE: Commissioner, Item 3 has been  
10 moved. I think we've had adequate discussion on it.  
11          MALE SPEAKER: Yeah.  
12          COM. BURNS: Well, actually, he's tried to stop  
13 me before. I mean, before we got the attorney general's  
14 opinion, there was a move to try and stop me.  
15          MALE SPEAKER: For what?  
16          COM. BURNS: So -- huh?  
17          MALE SPEAKER: What did I do before?  
18          COM. BURNS: You had it on the agenda. You've  
19 had it on the agenda -- this is the third time you've  
20 put something on the agenda that would have attempted to  
21 stop my progress.  
22          MALE SPEAKER: Well, anything (indiscernible).  
23          COM. BURNS: Well, we'll -- we'll get it back --  
24 we'll get it for you.  
25          MALE SPEAKER: Okay. (Indiscernible) send it my

1 way.

2 COM. BURNS: All right, yeah, yeah.

3 CHMN. LITTLE: Well, there's -- there's a  
4 question on the table. I think I'm going to ask that  
5 each individual Commissioner be polled.

6 MS. WAGNER: Mr. Chairman.

7 CHMN. LITTLE: Yes, Ms. Wagner.

8 MS. WAGNER: I'm sorry, so sorry to interrupt.

9 Item 3 has two parts to it. I was just -- it  
10 might be helpful to clarify the first part and the  
11 second part.

12 CHMN. LITTLE: Thank you, very much, Ms. Wagner.

13 Okay. So we have Commission discussion,  
14 consideration, and possible vote on whether to allocate  
15 funds from the Commission's budget for payment in  
16 furtherance of the scope of work associated with the  
17 August 2nd contract with outside counsel; or,  
18 alternatively, to suspend the allocation of funds for  
19 that contract pending submission of a revised scope of  
20 work in consultation with each Commissioner and present  
21 to the Commission for consideration within 45 days.

22 So Commissioner Tobin, which of the two are you  
23 proposing?

24 COM. TOBIN: That alternatively -- after  
25 alternatively, move forward, suspend the allocation

1 immediately for the contract pending submission of a  
2 revised scope of work to be developed by the Executive  
3 Director in consultation with each Commissioner and  
4 present it to the Commission for consideration within  
5 45 days.

6 CHMN. LITTLE: Okay. So we're voting to suspend  
7 the allocation of funds for the contract pending with  
8 Scott Hempling. And we're directing the Executive  
9 Director, in consultation with each Commissioner, to  
10 develop a revised scope of work to be presented to the  
11 Commission for consideration within 45 days.

12 Commissioner Tobin, how do you vote?

13 COM. TOBIN: (Indiscernible.)

14 CHMN. LITTLE: Commissioner Stump, how do you  
15 vote?

16 COM. STUMP: Mr. Chairman, may I explain my  
17 vote?

18 CHMN. LITTLE: You may.

19 COM. STUMP: I just want to reiterate there's no  
20 integrity problem in this Commission. There is a  
21 perception problem. And it is as simple as that.

22 And I vote aye.

23 CHMN. LITTLE: Commissioner Burns, how do you  
24 vote?

25 COM. BURNS: I'd like to explain my vote.



1 CHMN. LITTLE: You may.

2 COM. BURNS: I think this is just a disguised  
3 action to deny me the opportunity to do my  
4 constitutional duty of protecting the ratepayer, in this  
5 case from undue influence by utility overspending and  
6 overparticipating, if you will, in the elections of  
7 Corporation Commissioners.

8 I think the perception problem will always --  
9 will continue to remain because we have failed to  
10 address it. The way to get rid of the perception is to  
11 get the facts and to take a path of corrective action as  
12 opposed to blocking the effort to do so.

13 And I vote no.

14 CHMN. LITTLE: For my own vote, I think my  
15 commissions have been very clearly expressed.

16 But to quickly reiterate, I believe that there  
17 is absolutely no evidence of any untoward influence on  
18 the part of any external stakeholders on this Commission  
19 or the Commission Staff.

20 I believe this is a waste of taxpayer money,  
21 should we have -- if we would have spent it.

22 I believe that the functioning of this  
23 Commission is exemplary and should be held up as an  
24 example of one of the finest Commissions in the country.

25 And I -- I am just very frustrated with the

1 continued narrative that -- that has been presented that  
2 there is something wrong here and that there is somehow  
3 anything other than absolute integrity at this  
4 Commission.

5 And with that, I vote aye.

6 Commissioner Forese, I don't believe is on  
7 anymore. So his -- he's been excused.

8 Having exhausted the agenda --

9 COM. TOBIN: I forgot to mention the budget  
10 process while we're looking. Did we -- is it too late?  
11 Okay. I wrote my note and I forgot. Okay. Never mind.

12 THE COURT: All right. Thank you very much.

13 The -- the agenda is completed, and this meeting  
14 is adjourned.

15

16

17

18

19

20

21

22

23

24

25

# **Exhibit No. M**

ORIGINAL

COMMISSIONERS  
DOUG LITTLE - Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN



0000168502

Direct Line: (602) 542-0745  
Email: DLittle-web@azcc.gov

ARIZONA CORPORATION  
COMMISSION

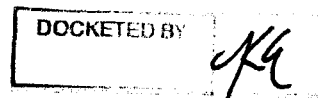
February 22, 2016

Mark Brnovich  
Arizona Attorney General  
1275 W. Washington St.  
Phoenix, AZ. 85007

Arizona Corporation Commission  
**DOCKETED**

FEB 22 2016

Re Docket: AU-00000A-15-0309



RECEIVED  
AZ CORP COM  
DOCKET COM  
2016 FEB 22 PM 4:11

Dear Attorney General Brnovich,

I am writing in regards to Commissioner Robert Burns' letter of February 9, 2016 requesting a formal legal opinion from you. I believe some background on utility ratemaking processes may benefit you as you consider Commissioner Burns' request.

Utility rates are set in proceedings known as rate cases. A rate case reviews the books and records of the utility for a specified 12 month period (the "test year.") The expenses and level of capital investment from the test year are used to determine how much revenue the utility needs to operate. So, unless a specific adjuster mechanism has been established in a prior rate case, expenses that occur outside of the test year are never included in rates. 2014 was not and will not be a test year in any APS rate case. Therefore, there is no avenue for 2014 expenses (other than those specified to be included in certain adjuster mechanisms) to ever influence APS' rates.

Within a rate case, expenses associated with political contributions, lobbying and charitable contributions are deemed to be unrecoverable in rates. The inability to recover these expenses in rates is a long standing component of utility ratemaking in Arizona. No Arizona utility in recent memory has argued that such expenses should be recoverable. Arizona is not unique in this respect. The inability to recover these types of expenses in rates is standard utility ratemaking as practiced in most (if not all) other states.

During a rate case, the Commission Staff performs an audit to ensure that only expenses that are deemed to be recoverable influence rates. For small utilities the Staff performs the audit themselves. For large utilities, such as APS, Staff typically employs professional and highly experienced consultants to perform the audit. These audits confirm that no expenses associated with political contributions, lobbying, and charitable contributions (or any other expenses deemed unrecoverable) influence the utility's rates.

In addition to the audit conducted by the ACC during a rate case, SEC requirements necessitate that an independent accounting firm review the books of most of our large utilities (including APS.) That review, among other things, ensures that all expenses are properly classified. This provides an extra layer of assurance on top of the rate case audit that expenses deemed unrecoverable are not included in rates.

In conclusion, the existing and long established rate case process at the ACC already ensures that expenses associated with political contributions, lobbying, and charitable contributions are not recovered through and do not influence utility rates. I am not aware of any evidence (or even allegations) that the existing rate case process is deficient in that regard. Any review of the appropriateness of extraordinary measures that are portrayed as related to the ACC's authority to set just and reasonable rates should take the above facts into consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Little", with a horizontal line extending to the right.

Chairman Doug Little  
Arizona Corporations Commission  
1200 W. Washington St.  
Phoenix, AZ. 85007

# **Exhibit No. N**

# Bob Burns

## Corporation Commission

[Home](#)[About](#)[Issues](#)[Take Action](#)[Contact](#)[Contribute](#)[Navigation](#)

## On the Issues

### Fighting for you against special interest groups

#### **THE ARIZONA REPUBLIC**

Utility Regulator Robert Burns launches investigation of APS spending

One of the key responsibilities of the Arizona Corporation Commission is to provide oversight and regulation of power and utility providers for Arizona residents. In the 2014 elections, it is believed that APS spent over \$3 million dollars to support Corporation Commission candidates to gain loyalty to the power company instead of the ratepayers.

This campaign activity was hidden behind political non-profits (commonly known as "dark money") so ratepayers like you would have no idea that a certain utility was actively trying to choose its own regulators! In the utility industry this is referred to as "Regulatory Capture" and could ultimately result in a loss of representation for Arizona ratepayers.

If regulated public service companies are going to financially support or oppose candidates campaigning for the Corporation Commission (as they have the legal right to do), it must be with full disclosure and transparency. As a member of the Commission, I have fought to require utilities to disclose their political campaign spending, particularly with regards to the elections for Corporation Commission. Ratepayers like you deserve to know if the company you write checks to each month is using that money to buy elections to diminish your influence over the rates you have to pay! I've endeavored to provide this transparency and I will continue this fight until we restore integrity and public confidence to the Arizona Corporation Commission.

### Timeline of my battle with APS:

- July 2014 - Candidates push APS about involvement in campaign. [Read more...](#)
- July 2015 - What did APS spend to get the regulators it wants? [Read more...](#)
- December 2015 - Regulator Robert Burns wants APS to disclose 'dark money' donations [Read more...](#)
- December 2015 - APS refuses request to disclose political contributions [Read more...](#)
- January 2016 - Utility regulator Robert Burns launches investigation of APS political spending [Read more...](#)
- April 2016 - Corporation Commissioner Robert Burns refuses to vote for APS items until company discloses 'dark money' ties [Read more...](#)

## Standing up to the EPA



During my tenure at the commission, I have actively worked to prevent EPA overreach. I voted to sue the EPA over Clean Power Plan Rule 111(d) which would all but shut down coal production in our state and, consequently, lead to exorbitant electricity rates. While Arizona and the other states suing the EPA won a temporary victory when the U.S. Supreme Court stayed the implementation of Rule 111(d) pending the outcome of our litigation, I recognize this issue will not be going away and I plan to continue my vigilant fight to ensure an affordable and reliable power supply.

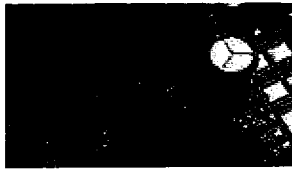
## Effective Commission Divisions



The divisions within the Corporation Commission must remain vigilant not only for ratepayers, but all Arizonans. The Corporation Division must always strive to operate as swiftly and efficiently as possible in order to provide a user-friendly system for corporate entry into the Arizona business community. The Securities Division needs to stay on high alert in order to detect and eliminate not only fraud and abuse, but also to protect our senior population from fraudulent security sales. Finally the Safety Division must continue to provide a high level of railroad and pipeline safety. A watchful, efficient commission improves the lives of all Arizonans, not just ratepayers.



## Leading the Charge on Emerging Technologies in Energy



I initiated the Commission's study on emerging technologies in energy. In 2014 and 2015, I led 7 workshops consisting of 73 presentations on technological advances in topics including energy storage, distributed generation, energy efficiency and demand response and how they will impact our current utility business model. Through this study, I learned the Commission never passed statewide interconnection rules, which is something we are now working to adopt in order to make the integration of technologies more streamlined and consistent. We also learned about ways to improve our resource planning for the future process and I continue to lead efforts to implement those improvements.

## Ensuring Affordable and Reliable Electricity and Water Supplies



In my view, the most important role of a commissioner is to find the balance between safe, reliable electricity and affordable, reasonable prices. The commission's constitutional charge is to keep prices low while also ensuring our utilities are healthy enough to provide reliable service. Arizona is lucky to have one of the most reliable power systems and access to a balanced portfolio of natural gas, coal, nuclear, and renewable energy. Unfortunately, the EPA continues to make one of our cheapest generation sources, coal, more expensive as part of its climate change policies. For the past several years, I have stood up for ratepayers on numerous occasions and will continue to be a voice for ratepayers opposed to prohibitive price increases.

## Contact Bob

Elect Robert "Bob" Burns  
P.O. Box 6419  
Peoria, AZ 85385

Phone: (602) 469-0799  
Email: [info@bobburns.gop](mailto:info@bobburns.gop)

<http://www.bobburns.gop/issues.aspx>

## Take Action

Like on Facebook

Get Bob on the Ballot

Follow on Twitter

Contribute

Contact Bob

Register to Vote

## Stay Connected



Paid for by Elect Robert "Bob" Burns